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SENATE—*Thursday, May 4, 1995*

(Legislative day of Monday, May 1, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray:

Almighty God, on this National Day of Prayer, we join with millions across our land in intercession and supplication to You, the Sovereign Lord of the United States of America. As we sound that sacred word Sovereign, we echo Washington, Jefferson, Madison, and Lincoln along with other leaders through the years, in declaring that You are our ultimate ruler. We make a new commitment to be one Nation under You, God, and we place our trust in You.

You have promised that if Your people will humble themselves, seek Your face and pray, You will answer and heal our land. Lord, as believers in You, we are Your people. You have called us to be salt in any bland neglect of our spiritual heritage and light in the darkness of what contradicts Your vision for our Nation. Give us courage to be accountable to You and Your Commandments. We repent for the pride, selfishness, and prejudice that often contradict Your justice and righteousness in our society.

Lord of new beginnings, our Nation needs a great spiritual awakening. May this day of prayer be the beginning of that awakening with each of us in this Senate. We urgently ask that our honesty about the needs of our Nation and our humble confession of our spiritual hunger for You may sweep across this Nation. Hear the prayers of Your people and continue to bless America. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. THOMAS. Mr. President, this morning the leader time has been reserved and there will be a period for morning business until the hour of 11:30, with Senators permitted to speak up to 5 minutes each; at 11:30 today, the Senate will resume consideration of H.R. 956, the product liability bill.

Under the provisions of the agreement reached last night, there will be a series of four consecutive rollcall votes beginning at 12:15 today. The fourth vote in the series will be on invoking cloture on the Gorton substitute amendment; therefore, Senators should be aware that second-degree amendments to the Gorton substitute must be filed 1 hour prior to that vote; further rollcall votes can be expected throughout today's session of the Senate.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a transaction of morning business for not to extend beyond the hour of 11:30 a.m, with Senators permitted to speak therein for not to exceed 5 minutes each; under the previous order, the Senator from Wyoming, [Mr. THOMAS], is recognized to speak for up to 30 minutes.

The Senator from Wyoming is recognized.

FRESHMAN AGENDA

Mr. THOMAS. Members will be relieved to know that there will be others joining me during this 30 minutes, other Members from our freshman group, to continue our discussion about the agenda for the Senate, the agenda for the Republicans, and of course the agenda for this country.

We feel very strongly, of course, that this is a great opportunity to move forward on the issues that were the issues talked about and voted on by Americans in the 1994 November election.

This is the greatest opportunity that we have had for a number of years to evaluate programs that have been in place, rather than continuing to simply put more money into programs when the results have not been what we expected. Now is an opportunity to take a look at the programs and see, in fact, if there can be changes made, to see if in fact, there are programs that do not need to be continued, that could better be done in the private sector, if there are consolidations that can be made so that we can do away with repetition and redundancy in programs. There is no question but that those exist.

Mr. President, we are excited by the opportunity. There are 11 Members who are in our first year in the U.S. Senate and are very proud and pleased to be there. More than that, I think we are excited at the chance to participate in change that has been needed for some time, participate in the change that voters sent Members here to accomplish this year, with the message clearly that there is too much Government and that it costs too much.

They sent Members here with a message that there are better ways of delivering services. We are not inclined to do away with programs and leave people without the assistance that properly comes from Government, but rather to find ways to help people help themselves back into a productive society. That is what it is all about.

I am very pleased, Mr. President, to be joined by the president of our freshman class, the Senator from Oklahoma.

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

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NOVEMBER REVOLUTION

Mr. INHOFE. I thank the Senator from Wyoming. I think he said it very well. I think it is very important, and the 11 freshman Members are probably in a better position than anyone else to remind the people that what happened on November 8, 1994 in an appropriate way at the ballot box, was, in fact, a revolution.

It is the first time in about 40 years that we have been able to look at Government and redefine its role and answer the question, has Government become involved in more things in a heavyhanded way, than it was intended to be involved in?

I know it is the liberal agenda of giving away, having programs for all needs, taking care of everyone from the cradle to the grave, is something that is easy to demagog, but to stand here and know that there are limited resources, I think it is irresponsible to continue that.

I think the people in November voted for changes, not so much Republican versus Democrat. Sure, the Republicans took over the House, and they took over the Senate. That is the first time that has happened. The main thing is that we campaigned for things that we have consistently voted for that contradict the behavior of Congress for the past 40 years.

When we look at Government's role, we have to ask the question, is Government's responsibility to take care of all the social needs? It is a difficult thing to talk about because it is easy to demagog.

I was distressed probably as much as anyone was when the President and others went out and said, well, the Republicans are trying to take the milk away from babies during the nutrition program debate when, in fact, the Republicans were suggesting a 4½ percent increase.

This is very disturbing. The people have awakened in America and they do not buy that kind of talk anymore. They are going to demand changes.

I have heard, and there is a perception that the U.S. Senate is operating so slowly, that we are not getting anything done. Now, I suggest, Mr. President, that we operate differently in the Senate, and as one who used to serve in the House of Representatives the same as the Senator from Wyoming, maybe we like the way that operates a little bit better because it is faster. And, the occupant of the chair was also there and knows what I am talking about.

On the other hand, there was not a day that went by in the U.S. House of Representatives when I was over there when this conversation did not occur. One would say, "Are we really quite ready to vote on this? Should we refine it more?" The answer is always "Do not worry, the Senate will take care of that."

For the first time in my life, when I was elected this last time to the U.S. Senate, I realized what our Founding Fathers had in mind when they said they wanted a bicameral system. In fact, we have to slow that train down.

How slow has the train been? The agenda, the Contract With America, had 10 items in it. In the House of Representatives, they were able to pass 9 of the 10. The only area that they did not pass was term limitations. In the Senate, in just the first 3 months, we passed congressional accountability, that is forcing Government to live under the same laws we pass.

We passed an unfunded mandates bill. As a former mayor of a major city, I can say that the major problem that exists in cities in America today is the fact that the Federal Government tells them what to do but does not send the money down. They are called unfunded mandates. We have passed that major reform here in the U.S. Senate, along with congressional accountability. A line-item veto—we have talked about line-item veto now for a long period of time. Now we have passed it here. We passed a moratorium on endangered species.

So we have actually handled about three or four of the major contract items and we are on schedule to handle the rest of them. But I honestly believe it is a responsibility, as the Senator from Wyoming said, of the freshman class, those of us who heard the mandate on November 8, 1994, to keep this train on track and to keep focused. We still have to finish up the rest of the items.

Right now, as soon as I leave the floor, I will be going over to the Environment and Public Works Committee hearing. Over there we are handling another one of the contract items; that is, doing something about the heavyhandedness of Government through its EPA regulations: what is happening in this country with the Superfund; what is happening with wetlands; what is happening with endangered species.

Oklahoma is somewhat of an agricultural State. As I traveled through, campaigning, I do not remember, of the hundreds of farmers I talked to during the campaign, any of them coming up to me and saying, "I want to know what the farm bill is going to do. I want to know about price supports." What the farmers in Oklahoma and throughout America are concerned about is property rights. That is one of the things we talked about in the Contract With America, that we have the fifth amendment to the Constitution and the 14th amendment to the Constitution that guarantee our property rights, not to lose our property without due process. We all know when farmers have property that is declared to be wetlands, they lose the value of that, and I have every expectation we are going to be able to pass the Private Property Protection Act that is going to guarantee the protection of private property and the value of that property to all Americans. Again, this is one of the contracts.

In this same committee meeting we are going to be hearing about the Superfund problems that exist. We know, and it is a fact today, that there are people who have received phone calls and letters from the EPA that have put them out of business for something over which they had no control. One such case was a lumber store owner in Tulsa, OK, by the name of Jim Dunn. He got a letter from the EPA that would have put him out of business, invoking $25,000 a day fines. Checking to see what he was guilty of, we found that for 10 years he used the same person to sell his crankcase oil to. This contractor was licensed by the Federal Government, by the State of Oklahoma, even by the county and City of Tulsa, yet they came back and traced some of that oil to a Superfund site and came to the conclusion that he was liable. In the absence of joint and several reform, he could be liable for the whole amount. And for that he was threatened to be charged a fine of $25,000 a day and possible criminal sanctions. That is the very thing that we are not going to allow to happen. It is the overregulation, the heavyhandedness of Government.

The Endangered Species Act—I am very proud the Senator from Texas, Senator HUTCHISON, was able to get an amendment through on the floor to put some sanity on that, to slow that train down so that, before we add any new critters to the Endangered Species Act, we are able to sit back and look at the cost/benefit of all these things. It was not long ago they decided to put the Arkansas shiner under the Endangered Species Act. Here is a little minnow that I guess they have decided is more important than people are. It would cost the average farmer in Oklahoma who has runoff into the Canadian system about $2,000 to protect this critter.

This is the type of foolishness we are going to stop. We are all sensitive to the environment and we are sensitive to the need for some controls. But we are not going to allow Government to continue its heavyhanded treatment of its citizens, the people who are out there who are paying for all this fun we are having in Washington.

So we have an agenda. Those of us who are the freshmen, the 11 freshmen—I am very pleased we are going to be driving this train, keeping it on track, keeping the focus, and not forgetting. Let me give assurances to everyone out there: We are not going to forget what the mandate was of November 8.

I yield the floor now to my very close friend from the House, where I served with him and was elected with him, and now he is a leader in the U.S. Senate, the Senator from Arizona, Senator KYL.

TAXATION, REGULATION, LITIGATION

Mr. KYL. Mr. President, during the campaign that the Senator from Oklahoma was just talking about that we just went through, I heard a phrase over and over again, "taxation, regulation, litigation," the three problems in this country that we have to do something about. The Senator from Oklahoma has just spoken eloquently about the matter of regulation. This Congress is going to do a lot to reform the regulatory climate in this country, to bring some common sense back into it.

The Judiciary Committee, on which I serve, just passed out a regulatory reform bill sponsored by the majority leader that is really going to get to the heart of some of the regulatory problems in our society today, bringing cost/benefit analysis and economic impact studies and risk assessments and peer review into the regulatory process, so you do not have the kind of noncommonsensical imposition of regulations such as those the Senator from Oklahoma was just talking about.

Let me turn to the third item in that trilogy, the matter of litigation. We are debating today, and have been for almost 2 weeks now, legal liability reform. It is part of what the House of Representatives did, and it is part of what this Senate is committed to do as well, to reform our broken tort system. Some call it the litigation lottery. It produces a tort tax on all of America because we end up paying higher premiums for insurance, higher costs for products, and, frankly, we do not get the benefit of a lot of improvements that could be made in pharmaceuticals and in products and so on because the manufacturers are afraid to experiment with anything new because they may get sued, they may have to pay big damages, and their costs would go up.

So what we are trying to do is reform that system so that all of America will benefit from improved technology, reduced insurance rates, reduced product costs, and, by the way, particularly for small businesses, not constantly suffering under the threat of being sued; also, of course, the physicians and the hospitals and other health care providers whose medical malpractice premiums have skyrocketed in recent years because of the possibility that somebody is going to sue them. They end up practicing defensive medicine, offering all kinds of services and tests that probably are not necessary but which they prescribe in order to make sure that nobody can say they did not do the absolute maximum that was necessary for the patient's good.

So these are parts of the problem we are addressing in litigation reform. I would like to just isolate one specific one that I will be talking about in about an hour and a half in the context of the bill we are debating today. I have laid down an amendment to correct a small, but I think important, part of the bill that is before us today. Many States—most States, I suspect—have what are called alternative dispute resolution mechanisms, ways of resolving disputes short of going to trial. Trials are expensive. In the end, the people who win are the lawyers. So what we are trying to do is to get people not to always go to court but to try to resolve their differences short of going to court, and most States have those procedures.

There is an error in the bill that is before us, section 103. It deals with alternative dispute resolution. It says when a State has alternative dispute resolution, the parties should use that. And that is fine. But then it says, if a defendant refuses to go forward when a plaintiff has made an offer in good faith and that defendant has refused the offer in good faith to go forward with the alternative dispute resolution, then you can assess attorney's fees and costs against the defendant. But there is no such provision with regard to the plaintiff refusing to go forward in good faith.

Mr. President, either we should not have a penalty for either party refusing to go forward or there should be the same penalty on both parties, whichever one of them refuses to go forward in good faith. But you cannot have a situation where one of the parties has the dagger hanging over his head and the other party with no downside for refusing to go forward in good faith. One way or the other that has to be fixed.

First, I said, "Why don't we have a penalty for both parties?" One objection was we should not be dictating at the Federal level what the States should do. Whatever people advertise there in the State, let that be. Then I say fine. My amendment simply strikes the penalty that is in the bill at the Federal level so that whatever the State law is the State law is. In effect, my amendment would return this alternative dispute resolution mechanism to the States to be enforced however the State law enforces it. Of course, in every State, if there is a penalty, the penalty applies equally to the defendant or the plaintiff, whichever one is refusing to go forward unreasonably.

So, Mr. President, I think this is something I will be talking about a little bit later but something my colleagues will want to fix. Our whole justice system is about fairness. The reason we are willing to put our lives and our fortunes into the hands of one person, a judge or 12 people on a jury, is because we have faith that the system is fair. One of the reasons we are talking about litigation reform today is because a lot of people do not think it is fair. It would be the height of unfairness to have a penalty apply to one side, the defendant, but not have that same penalty apply to the plaintiff for doing the same thing—for refusing to go forward to resolve the dispute alternative to a trial.

So my amendment will simply make it the same for both plaintiffs and defendants and reinstate State law as the guiding principle.

I will be talking about this a little bit later. I think it goes back to the whole notion we have to reform. We have to do things fairly, and, if we do things fairly in our society today, if people think they are getting a fair break regarding regulation, as the Senator from Oklahoma talked about, regarding taxation and regarding litigation, then people gladly shoulder the burdens inherent in supporting the Government and society at large. But when they do not think they are getting a fair shake—that is, when they begin to say this whole thing has to be changed—it has to be reformed.

Fortunately, at least the Senate Republicans who were just elected in the last election are here speaking every week about these kind of reforms. I think we are making a difference, Mr. President.

I know my colleague from Minnesota is here and wishes to continue the debate.

I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. GRAMS] is recognized.

ONE HUNDRED DAYS OF REFORM FOR A NEW CENTURY OF RESPONSIBLE GOVERNMENT

Mr. GRAMS. Mr. President, I am glad to have the opportunity to join with my fellow freshmen today to speak on the topic this week, "100 Days of Reform for a New Century of Responsible Government."

Having just returned from a series of townhall meetings in my home State of Minnesota, however, it would be more appropriate to refer to it as moving forward with the people's agenda.

Over the Easter recess, I held town meetings in five cities, traveling over 1,000 miles, talking with hundreds of people across the State of Minnesota.

And the mandate they delivered last November is more focused than ever—fix things in Washington.

From Austin, MN to Brainerd, their message focused on our $4.8 trillion debt.

The folks I talked with agree something needs to be done now. They have waited long enough.

They are not content to have a Government running deficits of hundreds of billions of dollars each year for as far as the eye can see. They are understandably frustrated by decades of Washington doublespeak when it comes to making the tough choices necessary to balance the budget.

And most importantly, they are concerned for their children and grandchildren who will be forced to finance the Government's spending spree.

Because of that massive $4.8 trillion debt, by the time every child born after 1992 enters the work force, they will face a Federal, State, and local tax rate between 84 and 94 percent.

Think about it. If Washington keeps doing what it is doing, spending dollars it does not have and passing along the bills, every child born after 1992 will spend their whole life working just to pay off a Federal spending spree that they never even asked for.

Fortunately, my constituents had an opportunity to voice their concerns during my townhall meetings in Minnesota, and today, I want to share what they had to say.

I brought with me some of the charts that I took around the State with me in these town meetings to try to point out some of the problems that I think we are facing. This first chart we were talking about is Federal taxes as a share of the median family income.

FEDERAL TAXES AS A SHARE OF MEDIAN FAMILY INCOME

The percentage of income paid to the Federal Government in direct taxes went from 3 percent in 1948 to 24.5 percent in 1992.

In the 5 years between 1948 and 1953, Federal taxes rose from 3 to 9 percent of gross income.

You have to remember this is coming out of World War II where we had to go into debt to help finance. Only 3 percent at that time was going to the Federal taxes.

In the 8 years between 1972 and 1980, the average family saw their tax bill rise from 16 percent of their annual income to 23.5 percent of their income.

The rise of the Social Security payroll tax and the erosion of the personal exemption have been the largest contributors to the reduction of posttax income for families.

It is no wonder middle class families are finding it difficult to buy a house, put their kids through college, or put money aside for their retirement.

AVERAGE INCOME FAMILIES WOULD BE TAXED $10,060 LESS PER YEAR

Let us look at chart No. 2, the average income families would be taxed $10,060 less per year.

According to the U.S. Bureau of the Census, the total pretax income for a family of four in 1992 was $47,787. After taxes, this same family's income fell to $36,915.

Under the 1948 tax rates, the median income family of four would pay only $812 in taxes to the Federal Government, leaving the family with an after tax income of $46,975 when adjusted to 1992 dollar amounts.

In 1992, a family of four, with the median income of $47,787, paid $10,060 more in direct taxes to the Federal Government than the same family would have if tax rates had remained at 1948 levels.

To put that into everyday terms, the median price of a single-family home purchased in 1992 was $103,700. The average annual mortgage payment was $7,380.

The annual family income lost to increasing Federal tax burdens exceeds the average annual mortgage payments for an average home by 36 percent.

What could you do if you could keep another $10,060 in your pockets? You could provide for the things your family needs without turning to the Federal Government and asking for more subsidies and more help. The dollars would remain in your pocket.

TWO-EARNER MEDIAN INCOME—1994

The next chart that I was able to talk with Minnesotans about is the 1994 two-earner median income chart.

A median household with two breadwinners spends about $2 out of every $5 it earns on taxes; 40 percent of everything you bring in goes to State, Federal, and local taxes. The average family spends more money on Federal, State, and local taxes than it spends on food, clothing, housing, and medical care combined. This does not include sales tax or your Social Security, the FICA tax. That brings it up to nearly 49.6 percent of everything an average family makes in this country which goes to pay for government.

Why are Federal taxes so high today? After all, did Ronald Reagan not pass a massive income tax cut in 1981? Yes, Reagan did sign a 25-percent income tax rate cut for all Americans in 1981. However, there have been six major tax increases since—1982, 1983, 1987, 1988, 1990, and 1993. These have nullified the Reagan tax cuts.

In the early 19th century, Chief Justice John Marshall wrote in the Supreme Court case, McCulloch versus Maryland: "The power to tax involves the power to destroy."

Today, this statement still rings true. Taxes are destroying the income of American families, leaving only 60 percent of what it earns to spend on life's necessities and joys.

In 1966 the median income family of four will work until May 30 to pay their share of Federal, State, and local taxes—98 days.

In 1948, the average family of four worked only 8 days to pay their share of Federal taxes.

Had Congress adopted the Republican alternative budget for fiscal year 1995, roughly 35 million families could have deducted $500 per year from their tax bill per child next April 15. For the average family of four, that extra $1,000 would be handy.

SOURCES OF GOVERNMENT SPENDING FISCAL YEAR 1995

The budget is composed of two principal fund groups, Federal funds and trust funds. This is how the bills are paid in Washington.

Federal funds carry out the general purposes of government, whereas trust funds, such as Social Security and Medicare, are designated by law and financed by specially allocated collections.

In 1994, trust fund surpluses totaled $95 billion. Under current law, the sum of the trust fund surplus and Federal fund deficit equals the unified deficit, which is commonly referred to as simply the deficit.

Merging these trust funds—this is what we collect in tax receipts from your income tax, the 1040 business taxes, and others—the trust funds bring in $511 billion and pay for Social Security payments, and others. But last year there was a $107 billion surplus in that trust fund which the Government also borrowed along with the green part of this chart, $192.5 billion.

What I would like to say about this green and what came out of the trust fund is money that we are borrowing from our children. We are taking this out of their future accounts to supply the dollars we need today in order to deficit spend, and the trust fund receipts in general revenues will total over $1.2 trillion or 81.5 percent of the Federal spending.

Unfortunately, this sum does not even begin to cover the Government's expenditures. The Government again will borrow from our children this $192 billion.

On the next chart, in real terms, a family of five making about $45,000 would have 10 percent of its Federal tax burden reduced through the $500 per child tax credit. This chart shows where many argue this is a tax credit for the rich. They talk about the $200,000 a year income. In real terms, families making under $75,000 a year would get 86 percent of the tax credit on $500 per child.

If you make under $100,000, about 95 percent of the families making under $100,000 would receive a tax credit.

In the next chart, the White House and congressional Democrats argue that a $500 per child tax credit is unnecessary because they expanded the earned income tax credit in the 1993 bill. But this claim ignores the difference between a wage subsidy and a tax cut.

The EITC is a wage supplement for working families with children with incomes up to $26,000 per year. It is intended to offset the Social Security tax burden on these families and to increase their wages through a cash subsidy.

A family of four earning $14,000 a year—slightly below the official poverty level—will pay no income taxes but will bear a Social Security tax burden of roughly $2,140. Now, this family is then eligible to receive some $2,400 from the earned income tax credit, nearly $260 more than its entire tax burden.

A family earning $28,000 a year—and not eligible for the earned income tax credit—would have 57 percent of its income tax bill and 17 percent of its total Federal tax bill erased by the $500 per child tax credit.

This is an important part of tax relief to these families that do not qualify but still make under $35,000 a year.

Family tax relief, I believe, should not be means tested. Every working family in this country is overtaxed, thus every working family, regardless of income, should be eligible for a $500 per child tax credit. The Tax Code should not penalize children simply because of their parents' income.

Now, along with family tax relief, the Minnesotans with whom I met during the past recess are demanding a balanced Federal budget with or without a balanced budget amendment. And if that means putting the Federal Government on a strict low-fat diet, then so be it.

One thing I heard over and over again during my town meetings, from Minnesotans who pay their own bills and balance their own budget, is that if they can do it, then the Federal Government can do it as well.

One thing is very clear: The budget can be balanced, and we can do it without gutting the vital programs on which millions of Americans depend. We will do it by containing the growth of Government while continuing to meet the needs of America's families, children, and senior citizens.

By streamlining Federal bureaucracy and sending the money back to the State governments in the form of block grants, Minnesotans know that they will have more power, not less power, more resources, not fewer, and new and better opportunities.

I have every confidence that the people of Minnesota can direct those resources and provide for those in need better than Washington bureaucrats could ever hope to do.

That is my motivation as we move forward during these next 100 days, and it is my hope that every Senator remembers the messages that they have heard over the recess and join in the effort to enact what we call the people's agenda.

We need to restrict or restrain the growth of spending in the Federal Government, but we also need tax relief for Minnesota families and for the Nation's families. We cannot have one without the other. I hope very strongly that as we move forward in these next 100 days we will be able to provide some of this long sought tax relief for middle-class American families.

I thank the Chair. I would now like to turn the floor over to my colleague, the Senator from Missouri [Mr. ASHCROFT].

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Senator from Missouri.

The first half hour of time which was reserved has expired, so the Senator has up to 5 minutes.

Mr. ASHCROFT. Mr. President, I would ask unanimous consent that I can speak as if in morning business for up to 10 minutes.

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

NATIONAL DAY OF PRAYER

Mr. ASHCROFT. Mr. President, I would like to take this opportunity to extend my appreciation to citizens all across America who are recognizing the observation of the National Day of Prayer. It is a time during which the people of America pray for this country and pray for those of us who have the responsibility to lead, not just at the national level, but at the local level as well. So in city halls across America, in State capitals, and here in the Nation's Capital, individuals are seeking to invoke the presence of God upon the deliberations of the Government, and upon the Nation as a whole.

I am especially grateful for this fitting activity and for the fact that as a nation we occasionally stop to remember the Almighty. In particular, I am pleased to express appreciation on behalf of myself and many others to Shirley Dobson who is leading the National Day of Prayer this year.

As our Nation heals from the wounds inflicted upon us by the Oklahoma City tragedy, and as we continue to confront daily the tragedies of death and violence that seem to plague our land, it is fitting we would call upon God to give thanks for the blessings we have enjoyed.

The Old Testament book of Chronicles provides a worthwhile guide to our times. It says: "If my people, which are called by my name, shall humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from Heaven and will forgive their sin and will heal their land." Mr. President, I do not think there is a more noble aspiration than the desire of America to be a land of healing.

Our Nation has embodied this attitude of humility and reverence before God from the very earliest days of its existence. During the Constitutional Convention, Benjamin Franklin rose to say: "If a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?"

There is little question but that we owe a debt of gratitude to Almighty God for the blessings he has continued to bestow upon us. As George Washington prayed: "Almighty God; we make our earnest prayer that Thou wilt * * * most graciously be pleased to dispose us all to do justice, to love mercy, and to demean ourselves with * * * charity, humility and a pacific temper of mind."

I believe those are the kinds of sentiments we all ought to be expressing today. I pray God's blessing upon this land, and I thank those who are assembling across the country to remember our need for guidance.

A BALANCED BUDGET

Mr. ASHCROFT. Mr. President, I want to address the issue of a balanced budget, but I want to start by talking about the shifting balance of Federal-State power. Last week, in United States versus Lopez, the Supreme Court held that a 1990 Federal statute did not "substantially affect" interstate commerce. While the decision did not overturn any precedents, it marked a sharp departure from the modern Court's expansive view of congressional power to regulate commerce. By limiting Congress' ability to use the commerce clause to legislate social policy, the Court highlighted the benefits of the Federal system envisioned by the Framers, and outlined in the Constitution. Moreover, they acknowledged what the American people have recognized for quite some time: That a Congress with the power to do everything for you, also has the power to take everything from you.

In the Senate, we have just begun to discuss spending priorities for the coming fiscal year. When the budget resolution comes before this Chamber, our actions will help shape the ongoing debate over State power within the Federal system.

The question we must ask is not what power the Federal Government ought to have, but what powers have been extended by the people. We must be ever mindful of the fact that the powers conferred upon the Federal Government by the Constitution have proscribed limits. Clearly, a National Government that has a debt of $4.9 trillion—that is over $18,000 for every man, woman, and child—has forgotten this fact.

Mr. President, if efforts are not made to limit spending, the Federal Government will no longer be able to fulfill its most basic constitutional obligations. In just 17 years, spending on entitlement and the national debt will consume all tax revenues; Medicare will be bankrupt in just 6 years; and in FY 1997, we will pay more in interest payments on the national debt than we will spend on national defense.

Last November, the American people spoke with a clarity and an intensity seldom heard in American government. What was their message? Return to us the ability to control our own lives, our own future, our own destinies. This was not some radical, foreign concept, it was the message of the founding—the message embodied in the capstone of the Bill of Rights, the 10th amendment, which reads: "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." I would posit, Mr. President, that this fundamental idea should animate all that we do here in the coming weeks.

The task of defining the constitutional line between Federal and State power has given rise to many of the Court's most challenging and celebrated cases. In United States versus Lopez, the Court reaffirmed the belief that the powers of the Federal Government have proscribed limits. Now, it is the opportunity of this Congress to recreate the dual sovereignty that the Framers envisioned. For "in the tension between Federal and State power lies the promise of liberty."

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WELLSTONE. Mr. President, I ask my colleague from California if she has come to the floor to speak on budget and Medicare. She was here first. I will be pleased to follow her.

Mrs. BOXER. Mr. President, I thank my friend, but I will be delighted to follow my friend. So if he would like his time now, that is just fine.

Mr. WELLSTONE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I yield myself such time as I might need from the majority leader's time.

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

MEDICARE

Mr. WELLSTONE. I thank the Chair.

Mr. President, we are, in a very short period of time, going to have a historic debate about the budget and about priorities in our Nation, the United States of America. Part of that debate—and I know my colleague from California will be speaking to this as well—will focus on Medicare.

As I have followed over the last couple of days some of the press conferences and some of the discussions taking place about Medicare, I think it is really important to come to the floor and speak about Medicare, not so much in political terms but in substantive terms.

We are faced with a real irony. It may very well be that a good many of my colleagues will now discover that health care reform—not just a focus on Medicare or Medicaid but real health care reform—is a pressing, compelling issue in this country.

First of all, Medicare is a benefit program. It is not just an actuarial program. It is important for me to make this point, Mr. President. My mother and father are no longer alive. Both actually had Parkinson's disease, but I can tell you, for my parents in their older age, Medicare, imperfections and all, was extremely important and it continues to be extremely important to senior citizens in this country.

It is not by any means perfect. It does not cover catastrophic expenses, it does not cover prescription drug costs, and elderly people over 65 years of age pay four times as much out of pocket as citizens under 65 years of age. But I think this focus on the budget is going to get us to the point where all of us understand some realities about health care and health care policy in the United States.

Eighty-five percent of Medicare expenditures pay for care for seniors with household incomes of less than $25,000 a year. So let us also understand that these benefits help hard-pressed people, not people who have plenty of income on their own.

Second point, Mr. President. I was on the floor the other day in a debate with one of my colleagues—I think it was the Senator from Texas, Senator GRAMM—and he was talking about his efforts to block health care reform in the last Congress and he was proud of that. In another point in time, we will have a debate, and I do not have a practice of debating colleagues when they are not on the floor, but I will say, as a matter of fact, one of the reasons that we are now dealing with the whole question of Medicare and how to finance Medicare is because we did not pass any comprehensive health care reform last Congress.

Mr. President, 89 percent of the growth in Medicare spending since 1980 has been due to medical inflation, general inflation, and changes in enrollment. Let me go over those.

Medicare is a benefit program that, of course, we have to finance. It is part of what we are about as a country. It is, indeed, a contract with senior citizens, and as we move into the next century, a larger percentage of our population are older Americans, and a larger percentage of those older Americans are older. That means that the cost of the program goes up.

Then there is the issue of general inflation. There is not much we can do about the first issue that I mentioned. And there is not that much we can do about general inflation, but we can look at medical inflation.

The interesting thing is that the Congressional Budget Office made it clear last Congress—I did not say Democrat, Republican, but CBO—that there are two ways you can contain medical costs. One is through global spending caps, as in the single payer proposal, or, if you do not prefer that, by placing some limits on insurance premiums. Some limit on insurance premiums is a very effective way of containing costs.

But, Mr. President, if you just focus on one segment of the population and you cut $250 to $350 billion between now and the year 2002, you will have a severe impact on that population. Let me say to my colleagues, when you were talking about rationing last Congress when we were talking about comprehensive health care reform, when you were yelling and screaming about rationing last Congress, I did not think that you had a case to make. But if you are just going to target Medicare, if you are going to cut expenditures for just one segment of the population, then you will ration by age, you will ration by disability, and if you throw Medicaid into the equation, you will ration by income. But now I do not hear my colleagues talking about rationing at all.

Second of all, if you make these cuts in Medicare, you are going to throw this whole health care system into—and I do not want to exaggerate—I would say a fair amount of chaos, if not utter chaos.

I ask unanimous consent to have printed in the RECORD a statement from the National Leadership Coalition for Health Care Reform, which includes many businesses in this case.

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

THE NATIONAL LEADERSHIP COALITION FOR HEALTH CARE REFORM,
Washington, DC, April 3, 1995.

Senator PAUL DAVID WELLSTONE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR WELLSTONE: We are writing to express our serious concerns about the proposed cuts in the Medicare and Medicaid programs. Our Coalition is the nation's largest nonpartisan alliance of business, labor, consumers, and providers dedicated to improving the health care system—in order to enhance the availability, affordability, and quality of care. (Our membership list is attached.)

We have long been on record as strong supporters of cost containment for both public and private payers. Until we contain costs, our citizens cannot be secure in coverage for themselves and their families. However, we believe that further drastic cuts in Medicare and Medicaid, coming on top of deep cuts legislated in 1993, would pose program difficulties and force the provider community to increase the shifting of costs to the private sector. Such cost-shifting would result in even more limited access, especially for low and middle-income Americans, and an increase in the number of uninsured.

We are troubled by approaches that focus primarily on cutting the price of services. One of our central concerns—as patients, payers, and providers—is that the quality of care be enhanced by changes in the health care system. If draconian cuts are made in prices, quality could further suffer. We urge a balanced approach, one that would control total system cost while improving quality, stopping cost-shifting, and expanding universal coverage.

We believe that if our nation were to concentrate on better outcomes and quality initiatives in addition to measures targeted on costs, there would be significant gains both in the appropriateness and efficiency of services, and in the reduction of costs. Strong quality assurance mechanisms are also essential as we shift more to better systems of managed care.

We urge Congress to take an integrated approach to addressing our three serious and interrelated problems of cost, quality and access. We fear a one-dimensional approach, or one dealing only with federal programs, will only make matters worse. We stand ready to work with you on a balanced solution that will create a better system for all our citizens.

Sincerely,

PAUL G. ROGERS,
Co-Chair.
ROBERT D. RAY,
Co-Chair.

MEMBERS OF THE NATIONAL LEADERSHIP COALITION FOR HEALTH CARE REFORM

Acme Steel Company.
Almalgamated Clothing & Textile Workers Union, AFL–CIO.
American Academy of Family Physicians.
American Academy of Pediatrics.
American Association of Retired Persons.
American Automobile Manufacturers' Association.
American College of Physicians.
American Federation of Teachers, AFL–CIO.
American Iron & Steel Institute.
American Nurses Association, Inc.
American Physical Therapy Association.
American Psychological Association.
American Subacute Care Association.
Association of Academic Health Centers.
Association of Minority Health Professional Schools.
B. C. Enterprises.
Bannon Research.
Bethlehem Steel Corporation.
Blue Cross Blue Shield of Iowa.
Blue Diamond Growers.
Brown & Cole Stores.
Burlington Coat Factory.
Ceridian Corporation.
Christian Children's Fund.
Chrysler Corporation.
Cold Finished Steel Bar Institute.
Communications Workers of America.
CoreStates Financial Corp.
Del Monte Foods.
Designworks Inc.
Drummond Company Inc.
Families USA Foundation.
Filter Materials.
Ford Motor Company.
GEC-Marconi Electronic Systems Corporation.
General Motors Corporation.
Giant Food Inc.
The Great Atlantic & Pacific Tea Company, Inc.
Gross Electric Inc.
The Heights Group.
H. J. Heinz Co.
Inland Steel Company.
INSIGHT Treatment Services.
International Brotherhood of Electrical Workers.
International Multifoods.
Internatinal Union of Bricklayers and Allied Craftsmen.
Johnstown Corporation.
Keller Glass Company.
Lincoln Telephone & Telegraph Co.
LTV Steel Company.
Lukens Inc.
Mankoff, Inc.
Maternity Center Association.
Maytag Corporation.
MEDNET.
National Association of Childbearing Centers.
National Association of State Boards of Education.
National Council of Churches of Christ in the U.S.A.
National Education Association.
Natinal Steel Corporation.
Navistar International Transportation Corporation, Inc.
Norwest Corporation.
Olympia West Plaza, Inc.
PAR Associates.
Pella Corporation.
Preferred Benefits.
R. R. Donnelley & Sons Co.
Ralphs Grocery Company.
Regis Corporation.
Rohm & Haas Company.
Safeway Inc.
Sara Lee Corporation.
Scott Paper Co.
Service Employees International Union, AFL–CIO.
Sokolov Strategic Alliance.
Southern California Edison Company.
Strategic Marketing Information, Inc.
Texas Heart Institute.
Time Warner Inc.
United Air Lines,Inc.
United Food and Commercial Workers International Union, AFL–CIO.
United Paperworkers International Union, AFL–CIO.
United States Catholic Conference.
United Steelworkers of America, AFL–CIO.
U.S. Bancorp.
The Vons Companies, Inc.
Westinghouse Electric Corporation.
Wheat, First Securities, Inc.
Wheeling-Pittsburgh Steel Corp.
The Whitman Group.
Wisconsin Public Service Corporation.
Xerox Corporation.

Mr. WELLSTONE. That is why the business community is opposed to these cuts in Medicare, because they know it will be a shell game. Mr. President, this will result in utterly irrational charge shifting. What will happen is that the providers already not receiving reimbursement they need will just shift the cost to the private sector, to those of us who have private health insurance plans. The business community knows that.

Some of my friends who were talking about Medicare just as a way of reducing the deficit, or even when they talk about reforming health care but just focusing on Medicare, I think really overlooked problems.

Third of all, Mr. President, I could tell you right now, I would fight this tooth and nail if for no other reason than in rural Minnesota, greater Minnesota, many hospitals and clinics will go under. In some cases, 75 percent of their revenues comes from Medicare. If you are going to take a meat-ax approach, a slash-and-burn approach, if you are not going to contain costs in the health care field but you are going to have these cuts in Medicare alone, then I could just tell you right now, many of our hospitals will go under and clinics will go under in our rural communities.

Fourth of all, Mr. President, this idea of vouchers—this is unbelievable. People are going to have to get real with the people that we represent. To say we will just give you a voucher, that we will set some kind of limited per capita payment, and then you go out, senior citizens, and sort of negotiate whatever plan works well for you. Mr. President, with preexisting condition exclusions, with no risk adjustment between plans, with no community rating, how do you think that is going to work? How do you think that is going to work? If you have a preexisting condition, you may be flat out of luck. If there is no risk adjustment, under a capitated system there will be a tremendous incentive for health plans not to accept people who are older and sicker. You have to make an allowance for that and that involves serious insurance market reforms.

Mr. President, my colleagues and I were able, a couple weeks ago, to restore the funding for an insurance counseling and assistance program—unwanted by Republicans, unfortunately. They wanted to even eliminate a small program providing counselors for elderly people to make sure people do not get ripped off by some of these private Medicare supplementary plans. It is as if they are just going to give people a voucher and say, good-bye, you are on your own.

Finally, Mr. President, let me make a point that the Medicare payment system is the way in which we finance some of the most important things we do in medical education. If we take away that funding, we are going to lose one of the most important things we do in this country. Training residents is a public good—the competitive private insurance market will not pay for it. You would have to ask everyone to pay into a fund in order to eliminate Medicare funding. But I have not heard such a proposal this year.

Mr. President, in Minnesota we have efficient markets. We have done an excellent job of holding down the costs. But there has been very little equity in terms of the kind of per capita payment. Parts of New York get $646 per month per enrollee, and Hennepin County in Minnesota, urban Minneapolis, gets $363 per month per enrollee. This is in terms of our reimbursement now for Medicare managed care plans. My State does not have any fat. If you are going to talk about across-the-board cuts, I will just tell you right now the impact on a State like Minnesota will be severe. We are in a very precarious position.

So, Mr. President, let me conclude this way. No. 1, the idea of cutting $300, $350, $250 or $400 billion in Medicare, so that we can have across-the-board tax cuts flowing to the wealthiest segment

of the population, is simply outrageous. It is simply outrageous.

A family making under $30,000 would be getting, roughly speaking, $100; and families with incomes of over $200,000 would be getting, roughly speaking, $11,000. And for that, we are going to have these kinds of draconian cuts in Medicare? It is outrageous.

No. 2, if we do not have that tradeoff—and I think some of our more responsible colleagues understand we cannot do that—I say to my colleagues that you cannot move forward with cuts in Medicare unless you do overall health care reform, and you cannot do it unless you contain overall costs.

I say to the Senators on both sides of the aisle, welcome to health care reform. Welcome to the health care issue. It is back. How ironic it is that when historians write about the 104th Congress, they are going to say that the 104th Congress had to address health care reform, how to finance it, how to deliver health care to people out in the communities in an affordable, dignified way. The reason the 104th Congress finally moved on this question is that some Senators realized, finally, that the only way we are really going to have deficit reduction based on a standard of fairness and the only way we are going to make sure we are able to provide decent health care coverage for all of our citizens, regardless of age or where they live or income, is with significant, meaningful health care reform.

I am ready to work with colleagues on both sides of the aisle, because I think that will now have to be one of our major priorities.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I want to thank my colleague for really putting out in very clear and simple terms the kind of crisis that we knew about. Indeed, President Clinton was so clear in his very first and second State of the Union Address when he said, "If we want to have meaningful deficit reduction, we better address the issue of health care reform."

Here we have a situation—and I serve on the Budget Committee. I am waiting for the Republican budget, by the way. It is way late. Since I came here, I have been on the Budget Committee, and the Budget Committee has been on time. Not this year. Do you know why? Because the Republicans have promised certain things they just cannot keep: huge deficit reduction, increases in the military, big tax breaks for some of the wealthiest again. Guess what? They said they would not touch Social Security. Thank goodness. Frankly, I think a lot of my colleagues made that point clear in the balanced budget debate. So the only cash cow they can look at is Medicare. And at this point, they want to cut hundreds of billions of dollars out of Medicare, and they realize, how can we sell that to the seniors? So they are creating this big crisis.

We talked about the need for health care reform. My friend, Senator WELLSTONE, was one of the leaders in this fight. So I say to my friend, thank you for your remarks this morning. It is almost poignant that we are at this point. Does he not agree?

Mr. WELLSTONE. Mr. President, I thank my colleague from California for her gracious remarks. It is ironic that indeed we have now come full circle back to the last Congress.

The very people who were so proud of having blocked health care reform are now talking about a crisis in Medicare, talking about how we will finance it, and are now making a proposal, I say to my colleague, for rather draconian cuts in Medicare. But they do not want to talk about rationing. Now they really are making proposals that will ration.

I think there are certain realities now that we all hope we will face up to and move forward on health care reform. It is the only way to do it. Otherwise, it will be disastrous.

The kind of proposals I hear people making now to cut Medicare will not only hurt senior citizens, but as I said, will create absolute utter chaos in this health care system. They do not deal with preexisting conditions, they do not deal with any of the bias of not having community rating, they do not deal with how to make it affordable. If anything, it will just have a severe impact.

Mrs. BOXER. I just want to thank my friend again. He is, of course, correct. The kinds of cuts that my colleagues on the Republican side are talking about out of Medicare simply will ruin Medicare. We cannot possibly, in the name of deficit reduction, destroy the Medicare system or the Medicaid system, for that matter.

SENATE AGENDA

Mrs. BOXER. Mr. President, I am very pleased that the leader has reserved some time to discuss general matters. I want to tie a few pieces together.

Before Senator WELLSTONE took to the floor, the Senator from Missouri was praising a Supreme Court decision that gave more power to the States. Rather than get into that decision, I want to point out that in vote after vote, the vast majority of my Republican friends here in the Senate have voted in these last few days to replace State product liability laws, State medical malpractice—indeed, all other civil laws—with Federal laws, with Federal caps.

We certainly know—at least I certainly feel confident in stating to the American people—that these changes are going to hurt them. They are going to hurt consumers in our Nation by substituting politicians' judgments for local judges and juries.

Here we have spent many, many days and many, many hours on a power grab—essentially, a Federal Government power grab—brought by this Republican Congress in the Contract With America, a power grab to say that we in the almighty Senate know better than a judge or jury what someone who has been burned beyond recognition ought to be able to get from those at fault; what someone who perhaps was paralyzed should get; what someone would be able to get if a physician, perhaps in a stupor, makes a dreadful mistake. We have heard of some of those situations occurring.

I think it is very ironic that Senators would come to the floor on the Republican side and talk about how they think more power ought to be invested in the States and then support this kind of a bill.

I hope today, when we vote cloture, that we will be able to stop this horrific bill from becoming a law of the land.

Mr. President, while I feel we should not be doing that, there are many other things I feel we should be doing here in the Senate, that we should be working on.

One of those, certainly, to my mind, is the confirmation of a new Surgeon General for this country, Dr. Henry Foster. I want to say that, in between my going to committees and my work on the floor, I have watched Dr. Foster. I am very proud of the way he handled himself.

I see, today, he has gained the support of one Republican on the committee, assuring that there will be at least a tie vote. I want to reiterate to the majority leader, Senator DOLE, what I have written to him twice about. I see that the Democrat leader is on the floor and I want to thank him for being so clear on this point.

Americans are fair, Mr. President. Americans are just. The fact is, this man deserves to be heard on this Senate floor.

We have an AIDS epidemic, we have a breast cancer epidemic, we have a lung cancer epidemic, we have an epidemic of teen pregnancies, we have too many cases of Alzheimer's, cancer, and heart disease in this country.

We have too much smoking going on in this country, too many young kids taking up smoking. We need a Surgeon General. I do not know why it has to take 3 more weeks for the committee to vote out Dr. Foster, but so be it.

I want to say today on the floor what I have written to Senator DOLE, that if Senator DOLE refuses to bring this nomination to the floor, even if it is a tie vote or, Mr. President, even if it is a losing vote, if Senator DOLE refuses to bring this nomination to the floor, I

reserve my right as a Senator to object to Senate business until we can have this nomination on the floor. Senator DODD yesterday said he thought it would be childish for Members to avoid this discussion on the floor and I want to, again, say that I agree with that.

Now, Mr. President, I would like to speak to one question in my remaining 5 minutes. Where is the Republican budget? Where is the Republican budget? By law, the Budget Committee was required to complete work on that budget by April 1. It is May 3, 33 days after that date, and we still have no budget. By law, the entire Congress is required to complete work on the budget by April 15. It is May 3—18 days after that date—and still no budget.

For years, my Republican colleagues have said we could easily eliminate the deficit, and we know how. Not one of my Republicans friends voted for the budget last year, which cut $500 billion from the deficit—not one. They said, "We can do it better; we can do it quicker; we can do it." Where is the budget?

My Republican friends have overpromised: More military spending; balancing the budget by 2002; tax cuts, going up to over $200,000, people will get tax cuts. Yes, they have a problem. They looked at that budget and they saw only one place to go—Medicare. When it got out that they were looking at cuts of $250 billion out of a program that 75 percent of Americans treasure, they started to get a little weak in the knees. They said: What are we going to do? Tell the people that Medicare is in crisis. This is the new turn of events. Medicare is in crisis, they say.

Well, I have looked, looked at all the reports that have come from the Medicare trustees over the years. There has not been a year when Medicare trustees did not say, at some point in the future, Medicare will be in trouble. This year is no exception, because when this Congress was Democratic, we voted to shore up the Medicare fund by making some tax law changes.

The Republicans in the House repealed that. If their law continues, Medicare will be in trouble in 1999. If we can stave them off, we have the fund solvent until 2002.

Yes, we have to fix Medicare. Yes, we have to reform Medicare. Yes, we have to do it right. But not slash and burn. And not outside of the context of comprehensive reform.

I will say that if the Republicans succeed in this, our seniors will be thrown into managed care; they will lose the doctor of their choice; they will have to pay more out-of-pocket expenses, and many hospitals in California are going to close.

Let Members stand tall as Democrats in this U.S. Senate. Let Members demand to see this budget. Let Members say to our seniors that we will stand for seniors and we will not allow the seniors of this country to have the budget balanced on their backs. They deserve more respect than that; they deserve much more than that.

Thank you, Mr. President. I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the minority leader from South Dakota.

WHERE IS THE BUDGET?

Mr. DASCHLE. I rise to commend my colleagues for their eloquent presentation this morning. The Senator from California could not have said it better.

The Senator from California knows, as my other colleagues have also indicated they know, the ramifications of this budget resolution and the extraordinary problems we face as we consider some of the implications of the huge cuts in Medicare that are now being proposed, as well as the extraordinary link between those cuts and the tax cut for the wealthy that some of our Republican colleagues have proposed over the course of the last several months, and, as we have already indicated, the House of Representatives has already passed.

The concern I want to address just briefly this morning has to do with what happens when nothing happens. What happens when the budget resolution does not come to the floor in the manner the law requires? What happens to the debt? What happens to the cost of running the Federal Government each and every day that we delay?

It may come as a surprise to some who may be listening that each day we delay action on the budget, the Federal debt increases by $820 million. The budget resolution, of course, was due on the 1st of April. The budget resolution was due almost 35 days ago. At that time, if you use the day before as the baseline, we increased the debt on that particular day by $820 million. On April 2, only 2 days after the budget resolution was supposed to have been reported, the debt increase was up to $1.6 billion.

As you can see, in just the first 9 days since April 1, the debt increased by $8.2 billion simply because there has been no budget resolution and no opportunity for Congress to address the concern that so many of our Republican colleagues say ought to have the highest priority in the Congress today. Indeed, it should have that priority.

The situation is beginning to look very serious as you go from this chart to the next one. The next chart indicates that 10 days after the budget resolution was due the debt had increased by $9 billion; 20 days after the budget resolution was due the debt had increased $16 billion. So, in just 20 days, because of inaction, because we have not had a budget resolution, because we have not been given an opportunity to address the extraordinary consequences of failure in leadership here, in just 20 days we have seen an increase of $16 billion in the total debt, directly attributable to the fact that we have not had a budget resolution.

It gets worse, Mr. President. This chart begins to depict how much worse. On April 21 that debt increased to $17.2 billion. As you can see, slowly we are going off the chart now. The chart is not even big enough to show the debt that has accumulated by the last day of the month in which the budget resolution was due.

As we all said, we knew the implications would be serious, but this chart shows just how serious. On April 30 we now see the debt, as a result of not having a budget resolution, go off the charts to $24.4 billion. That is $24 billion more than it would have been had we been able to stop this growth, this excessive increase in debt, on April 1 when the resolution was due.

The real story then comes on the final chart. At least we hope it will be the final chart. The final chart shows that on May 1 the increased debt was $25.2 billion; on May 2 it was $26 billion; on May 3, another $820 million more than the day before—$26.8 billion more than on April 1.

Today I will add yet the newest bar, for May 4, $27.6 billion in additional debt as a result of the lack of action, as a result of the inaction of the Senate Budget Committee and our colleagues on the Republican side in failing to address this issue.

This is what we are facing. We are going to need charts that I will not be able to reach here by the end of this week, simply because we have not been given the budget resolution that the law requires. We all understand. When the American taxpayer is told that he has to produce his check to pay his taxes by April 15, people join long lines at the post office in order to ensure that they get their return in the mail and comply with the law. American taxpayers go down to the post office at midnight sometimes, on the eve of April 15, to ensure that they comply with the law. The law says everybody has to pay their taxes by April 15, and, indeed, the vast majority of American people, as law-abiding citizens, comply with the law.

The law also says that the budget resolution has to be passed out of the Budget Committee by April 1, and out of the Senate, the Congress, by April 15. But we have now seen the cost of inaction. We have now seen what happens if nothing is done. We have now seen how it is compounded, day after day, with increases in cost, increases in debt, increases in the complexity of the problem we are going to have to address in the coming days.

I must say, I think the biggest concern that many of my colleagues on

the other side have as they consider all of the ramifications of a budget resolution is a promise that was made last November. We heard it time and time again. We heard that we can cut taxes, we can increase or at least maintain defense spending levels, we can balance the budget, and we can do all of that without touching Social Security.

Now, given the circumstances, it is becoming increasingly apparent that that is not possible, that there is no way to do all of that, as was promised last November. So, as we look at ways with which to begin to address it, they are coming to the conclusion that one of the biggest pools of resources from which to draw to pay for the tax cut they promised is Medicare. In the name of reform, some of our colleagues on the other side are suggesting that is really what we must do. Let us reform Medicare. And in reforming Medicare we just happen to see this new pool of resources so that we can pay for a tax cut for the wealthy.

Cutting Medicare benefits for the elderly in this way has nothing to do with reform. That is not reform. Certainly there has to be some appreciation of the difficulties we are facing in Medicare with the trust fund. Everyone is willing to concede that. But, to say in the name of reform we are going to cut benefits, in the name of reform we are going to do it in the context of a budget resolution, in the name of reform somehow we are going to reduce Medicare but then increase the tax cuts for the wealthy, all with the same stroke of the pen, I think defies credibility. I think most Americans understand the fallacy of that kind of logic and that kind of budgeting.

So I do not think there is much support for that proposal. I think people are beginning to understand that the promises made last November are coming home to roost. The promises made about cutting taxes and cutting the budget and maintaining defense spending and not touching Social Security—all in a very short period of time, without any pain. The American people are coming to realize that it just cannot be done.

So we hope to have a good debate about the budget. We hope we can talk about our priorities. We can talk about the need for reforming Medicare. But, as we said over and over on this floor over the last 2 years, you are not going to resolve the Medicare problems until you deal with the health care problems in this country. We all understand that, to a large extent, the increase in Medicare costs is being driven by the same forces driving across-the-board health care costs. Medicare's increases in costs this year are no greater than the increases in cost in the private sector. So we all understand that, indeed, if we are going to get a handle on Medicare, if we really are going to reform Medicare, then we have to reform the overall health care system. Otherwise, there will be no real reform—only cost shifting.

So I am hopeful we can stop this steady rise in the debt. I hope we can begin to see these bars go back down as we deal with the budget resolution. But it is now the 4th of May. We have seen from past charts just what has happened with each day, the daily incremental increase of $820 million leading in less than 45 days after the date set for the Budget Committee to produce a budget resolution to a proliferation in debt of $27.6 billion.

We will bring this chart out again. We will continue to show, as we have already been able to show, that we cannot afford delay. We cannot afford the lack in leadership that we have seen on the Senate Budget Committee with regard to a budget resolution. We need to get on with it. We want to work in a bipartisan way. But we certainly appreciate the extraordinary complexity the Republican Party and our Republican colleagues have created for themselves as we try to grapple with the promises made last November.

You cannot cut taxes, you cannot increase defense, you cannot balance the budget and not touch Social Security, all at the same time. Thus, we are left with what we see on these charts. We want meaningful budget management. We want an opportunity to see a resolution that will turn this chart around, that will bring this debt down, that will do what the American people want us to do, and that will protect Medicare, that will protect those investments in people that we believe in so strongly.

So, Mr. President, again let me commend my colleagues for their participation this morning, for the work that they have done in laying out the facts as we see them relating to the budget, Medicare and the implications of doing nothing. We need leadership. We are very hopeful that, in the not too distant future, we will see a lot more of it coming from the Republican side.

I yield the floor.

Mr. DORGAN addressed the Chair.

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

Mr. DORGAN. Mr. President, I enjoyed listening to the minority leader and others ask the question this morning, "Where is the budget?" I indicated yesterday that I thought the majority party in the Senate had ridden into a box canyon. All of us have watched the old spaghetti westerns, old-time cowboy movies in America and understand what riding into a box canyon is. In fact, they usually show them as riding into the box canyon whistling and happy-go-lucky. And they ride into that box canyon, look around, and understand they are in very big trouble.

What has happened here with respect to box canyons? The majority party promised the American people that they were going to increase defense spending. In fact, they are going to rebuild now a new star wars program, increase defense spending, cut taxes and balance the Federal budget. But, of course, that does not add up. Most people know it does not add up. So they had an urgency about this program. Was the urgency to cut spending to balance the budget? No. The urgency was to cut taxes in what they called a middle-class tax cut.

The middle-class tax cut turns out to be not so middle class after all. The middle-class tax cut does the following. If you are a family below $30,000 in income, you get a big old tax cut from those folks over there of $124 a year. If you are a family with over $200,000 in income, those folks say, "Guess what? We have a check for you for $11,200, if you are such good Americans."

I think everybody is a good American. So I am not saying we ought to discriminate. But it seems to me, when you are up to your neck in Federal debt and the first job is to cut spending to balance the budget, and if with the first jump out of the chute you run over with a tax cut, the bulk of which goes to the wealthiest Americans, then come to the floor of the Senate and claim it is a middle-class tax cut, you need an award for fiction. Get your tux on. We will give you a prize for fiction. The truth is that this tax cut is not a middle-class tax cut. This gives the cake to wealthy and the crumbs to the rest.

Once they decided they were going to do this and started adding up numbers, they discovered the laws of arithmetic—which most of us learned early in life—do not allow them to balance the budget after all. So then they said to us. Now that we have done this, we want you to join us in cutting spending for Medicare and Medicaid. I guess our response is we certainly ought to join together to reform Medicare and Medicaid to make that solvent, whole, for the long term. But my response to the majority is, the first thing you ought to do is find a place to deep-six nonsense. Get rid of tax cuts for wealthy. Then let us talk about reforming the rest.

All of us have a responsibility. The urgency of cutting spending and the urgency of balancing the budget is not in question. Why were those who were most urgent here on the floor of the Senate to change the Constitution now walking around scratching their heads wondering, "When will we get a budget?" The question ought not be much cause for wonder. The date was April 1. It is in the law. We can read the law books to understand when the requirement to bring the budget to the floor of the Senate was—April 1 and April 15. Those are the two statutory dates. Now it is May.

Those folks who said it was urgent to do something about the Federal budget

deficit have only had time to pass a tax cut, a big tax cut, over in the House. And then this morning we see people standing on the floor of the Senate justifying it as a middle-class tax cut. That is no middle class in any town I am familiar with—middle class, $200,000 or more, $11,200 in tax cuts, and $120 for $30,000 or less, for families that earn that amount of money. No. I think the lessen here is clear.

I do not think we have a budget on the floor of the Senate because the folks who must produce the budget in the Budget Committee understand that the dilemma they have is they want to give tax cuts for the wealthiest Americans and then ask us to help them cut spending on health care for the elderly and the poor people. That does not add up. It is not going to happen.

What we ought to do is back away from this ideological nonsense and decide to start over completely. We ought to join hands and say, let us stop this agenda stuff that we have, the Contract With America agenda that says let us make the rich richer and let us cut the health care to the poor and let us decide to do this together, in a sober, serious, thoughtful way. All of us understand. Yes. Federal spending must be cut. Let us cut it in real ways. Let us do it together and let us do it first. When we have done that job, we have cut spending and reduced the Federal budget deficit and have a plan to balance the budget, then let us talk about tax cuts. And, when we do, let us talk about tax cuts for real American families. Let us do it in the real way. That is the way to approach this budget dilemma.

I end as I began. The question is, "Where is the budget?" Let us find that answer, bring it to the floor, pass it in a reasonsible way, and put this debate on the course it should be on.

I yield the floor.

Mr. LAUTENBERG addressed the Chair.

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

Mr. LAUTENBERG. Mr. President, I understand we are in morning business. Unless specified, the time permitted for debate is 5 minutes.

The PRESIDING OFFICER. That is correct.

Mr. LAUTENBERG. I believe we have requested 10 minutes of time for the introduction.

The PRESIDING OFFICER. That is correct.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that be extended for 5 minutes so that my colleague from California, Senator FEINSTEIN, can also make her remarks.

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

Mr. LAUTENBERG. Thank you, Mr. President.

(The remarks of Mr. LAUTENBERG and Mrs. FEINSTEIN pertaining to the introduction of S. 757 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. FEINSTEIN. I thank you, Mr. President, and I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

EXPOSING THE FRAUD

Mr. HOLLINGS. Mr. President, before I have to leave to attend a budget meeting, I would like to try and expose the fraud in statements from Members on the other side of the aisle claiming that the President is unwilling to lead and that, much to their surprise, they just discovered that the Medicare trust fund is going broke.

The truth of the matter is that they have been telling us for a while now that action by the President was not even necessary. I wish I could take us back to December 18 after the glorious Republican victory in November when Mr. KASICH and others were on the TV saying,

> We're not going to wait on any budgets. We have three budgets. In fact, we are going to take one of them and have them first and we're going to have the budget cuts before we get to tax cuts.

I want the people to go back. For months they totally ignored the President and saying that his proposals were irrelevant, that they had their own plan, their own revolution, and were going to present their own budget. Having been a former chairman of the Budget Committee, that excited me. In January, I submitted a plan for the RECORD that showed how to put our Government back in the black by 2002.

But then having gone back on their promise to give us a budget in January, they said, "We're going to put the spending cuts in the bank before giving any tax cuts." Then, we had the circus out on the lawn, as the House passed the tax cuts. We are back to the days of Rome under KASICH, GINGRICH, and that crowd. They went back home, had celebrations, waved flags, and everything else of that sort.

But then, they came back to Washington and said, "Whoops, we just found out that Medicare's going broke." As a result, we have Medicare hearings coming out of our ears.

The Budget Committee has not given us the budget. They will not mark one up even though by law they are required to report out a budget by April 1. While we wait for the markup, they are having Medicare hearings all over the Hill. Mr. President, let me get right to the point and refer to the report of the board of trustees of the Federal Hospital Insurance Trust Fund last year, dated April 11, 1994, and addressed to Speaker Foley and Vice President GORE:

> GENTLEMEN: We have the honor of transmitting to you the 1994 annual report of the Federal Hospital Insurance Trust Fund.

On page 2, it says:

> The trust fund ratio defined as a ratio of assets at the beginning of the year to disbursements during the year was 131 percent in 1993, and then under the intermediate assumptions is projected to decline steadily until the fund is completely exhausted in 2001. Under the low-cost assumptions, the trust fund ratio is projected to decline until the fund is completely exhausted in 2004. Under the high-cost assumptions, the trust fund ratio is projected to decrease rapidly until the fund is exhausted in the year 2000. These projections clearly demonstrate that the hospital insurance program is severely out of financial balance, using a range of plausible economic and demographic assumptions.

Now, that makes it pretty clear. Why didn't the Contract With America face up to that point? They knew about it, but did not want to face up to it. Moreover, they rebuffed the President's attempts to address the problem. Let us remember that the President of the United States did not cause any kind of deficit in Medicare. He was down in Little Rock; if it was caused, it was caused by me and other Members of Congress, but certainly you cannot attribute it to him. Still, when he offered his proposal, we could not get any cooperation whatsoever from Republicans. I can say that categorically because when we finally got a $56 billion Medicare cut adopted, it was without a single Republican vote in the House of Representatives or in the U.S. Senate. In addition, we took $25 billion from the wealthiest Social Security recipients, and put the money into the HI trust fund. What does the Contract With America call for? It says repeal the Social Security tax increase of last year and thus hasten the insolvency of the HI trust fund.

We ought to cut out this nonsense and tell them to give us a budget. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE AMENDMENT ON JOINT AND SEVERAL LIABILITY

Mr. ABRAHAM. Mr. President, I want to take a couple of minutes today to speak once again in support of the amendment that I have introduced along with the distinguished Senator from Kentucky.

The purpose of our amendment which we will soon be voting on is to try to expand the portion of the underlying bill on product liability that pertains to joint and several liability beyond the realm of product liability to other aspects of civil actions.

As I spoke yesterday on several occasions, and as I have argued in quite a variety of settings over the last few weeks during this debate, what we are talking about here is what I believe is an underlying principle of the American legal process, the principle of fairness and the principle of justice. These principles, it seems to me, tend to be out of sync in the area of joint and several liability.

As I have demonstrated in the floor statements I have made, we have countless incidents where persons who are only minimally responsible for the damages involved in a court action, or other legal action, find themselves shouldering all or most of the responsibility for paying damages because of the fact that they are the deep pocket.

Unfortunately, this is not just something that afflicts defendants who are big businesses. As I demonstrated, it is also a problem for municipal governments, for county governments, for State governments. It is a problem that all too often afflicts nonprofit organizations, charitable organizations, and the like.

We heard talk during the debate yesterday that somehow the amendment we are speaking of would be adverse to women. But the fact is that women do not just find themselves as plaintiffs in legal actions; they often find themselves as defendants. They, too, could be victimized by the joint and several liability process that we have today. Indeed, 30 percent of the small businessowners in this country today are women. It is the small businesses who are most at risk, in my judgment, unless we repair this defect in the legal system at this time.

For those reasons, Mr. President, I just wanted to conclude the debate on this topic—at least from my perspective—by reiterating the arguments I made yesterday and by calling on those people who have been supportive of reform of the joint liability process in the context of product liability, to support this effort to expand this notion beyond product liability.

Every argument that makes sense in the product liability context, where the people who are likely to be beneficiaries are the producers and manufacturers of products, also makes sense when the people who are likely to be aided are average American families, small businesses, charitable organizations and municipal governments. If this reform makes sense for product manufacturers, I think it equally makes sense for the small businesses, the charitable and nonprofit organizations, and for the local governments of this country.

For that reason, I sincerely hope that those individuals who will support the product liability legislation will support the expansion of this particular provision of that legislation to help the small businesses, the cities and towns of America, the average American families and, I think most importantly, the communities of our country.

Mr. President, I yield the floor and 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. COVERDELL. 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. COVERDELL. Mr. President, it is my understanding that we are in the closing minutes of morning business.

The PRESIDING OFFICER. That is correct.

JOINT AND SEVERAL LIABILITY

Mr. COVERDELL. Mr. President, I rise to speak on behalf of the Abraham amendment. I am not a lawyer, and I am glad that I can take a chance here, as a small businessman, to bring perspective on the question a little bit out of a legal arena. This whole question of joint and several liability, which means to an everyday person that if there is a wrongdoing that occurs and a legal dispute emerges about it, that if several parties are involved, and let us say party A is responsible for 90 percent of the wrongdoing and party B is responsible for 10 percent of the wrongdoing, and a suit is filed against the two of them, if it is determined by the legal process that party A, who was responsible for 90 percent of the wrongdoing, does not have any money, then the person to go after is party B who, while only sharing 10 percent of the responsibility, for one reason or another, has access to large sums of money. Therefore, he is the target.

Mr. President, I think in the American way that is just considered not fair. That is making two victims out of the crisis: The person to whom the wrongdoing occurred, and then this other party who happens to be in the arena, who does not share much of the responsibility, but just has resources. Therefore, that entity becomes the target.

In American A-B-C logic all across the country, it is not right for somebody who does not bear the responsibility, or much of it, to be the target of paying up just because they have money.

We have read several of these ludicrous stories of a person coming out of the McDonald's, spilling their milk shake, getting into an accident with somebody, suing the person they got into the accident with but that person is uninsured, so they sue McDonald's.

Mr. President, in light of the time, I will not dwell on this much more. I did take an interest in this Newsweek article—I am sure it has been talked about before—with the legal tax on the everyday consumer. Because of the kinds of things I have just been talking about, everybody is scared to death. So they build in all kinds of defensive tests and costs to protect themselves. An 8-foot ladder that costs $119.33, $23 of the cost is now a product of our legal system.

A tonsillectomy which costs $578 has $191 built into it because of our legal system. That is why 80 percent of the American public support the broadening of legal reform that we have been battling here for the last 2 weeks.

I will just close by saying once again that it is fundamentally wrong to make people who have a very small responsibility, if any, be the subject of having to pay damages simply because they were in the area or arena, or we had a situation where, as I said a moment ago, 90 percent of the responsibility belongs to person A and 10 percent to person B, but person B has resources, so they will ruin that person's life, ruin that victim's personal business, simply because they had resources and were responsible.

That is fundamentally unfair. That is why so many Americans support this amendment on joint and several liability, which means a person is responsible, financially, for their proportional share of what went wrong.

Mr. President, I yield the floor.

NOTICE

Financial disclosure reports required by the Ethics in Government Act of 1978, as amended and Senate rule 34 must be filed no later than close of business on Monday, May 15, 1995. The reports must be filed with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510. The Public Records Office will be open from 8 a.m. until 6 p.m. to accept these filings, and will provide written receipts for Senators' reports. Staff members may obtain written receipts upon request. Any written request for an extension should be directed to the Select Committee on Ethics, 220 Hart Building, Washington, DC 20510.

All Senators' reports will be made available simultaneously on Wednesday, June 14. Any questions regarding the availability of reports should be directed to the Public Records Office (224-0322). Questions regarding interpretation of the Ethics in Government Act of 1978 should be directed to the Select Committee on Ethics (224-2981).

GOVERNMENT REORGANIZATION HEARINGS

Mr. ROTH. Mr. President, in early January I announced my intention to have the Governmental Affairs Committee develop this year a blueprint for the reorganization of executive branch departments and agencies. I would like to take this opportunity to indicate that this effort will begin with hearings on May 17 and 18. That first day

will be devoted to an overview of the general principles relating to the structuring of the Government. The second day will focus on specific proposals that have been made regarding the elimination and consolidation of executive departments and agencies.

A number of such proposals have been made recently. In March, for example, our majority leader suggested the elimination of four departments—Commerce, Education, Energy, and HUD. Similar proposals have been made by other Members, both in the House and the Senate. In early January, I said that we might be able to reduce the number of departments by up to one-half of the present 14.

But more is involved in such an effort than simply outright elimination of departments and agencies. We may need to retain certain existing programmatic responsibilities of an agency that is itself to be terminated. We need to think about where to put these programs. And to really do this right—to begin to move us toward a Federal Government that is appropriate for the 21st century—we ought to be thinking in terms of a fundamental reorganization of the executive branch.

In other words, rather than trying to restructure the Federal Government piecemeal—eliminating a couple of departments this year, consolidating a couple of more next year, and leaving everything else untouched—we need to take a more comprehensive approach.

And this is what I intend to have Government Affairs Committee do. As the committee with the jurisdiction over the reorganization of the executive branch, including the creation and elimination of Cabinet departments, the Governmental Affairs Committee is ideally suited to look at the big picture, and to ensure that all the pieces of a reorganization fit together. Doing this may require a fundamental rethinking of what the executive branch ought to look like in the future.

To illustrate what this might mean, I would point to a proposal made by the Ash Commission during the Nixon administration. It was then proposed that four existing departments be retained—State, Treasury, Defense, and Justice—and that all the others be folded into four new departments with very broad jurisdiction—Natural Resources, Human Resources, Economic Development, and Community Development. In 1991, then-Congressman Leon Panetta proposed that the executive branch be reorganized into just six departments—State, Defense, Justice, Human Services, Natural Resources, and Economic Policy. And just last month the Heritage Foundation proposed that there be only five cabinet departments—State, Defense, Justice, Treasury, and Health and Human Services.

But before launching into a full-scale examination of Federal departments, agencies, and programs—to see what should be eliminated, consolidated, or reorganized—I think we need a better understanding of how to approach this task.

This is why I intend first to begin with an overview hearing. The purpose will be to get a better understanding of the principles and criteria that Congress should apply as it looks to specific aspects of governmental organization and operation. For example, is it best to centralize responsibility into fewer departments, so as to focus accountability and enhance policy coordination? Or is it best to decentralize responsibility, in order to eliminate layers of bureaucracy and improve responsiveness? Are there innovative ways to achieve the advantages to both approaches—such as through semi-independent agencies located within larger departments?

If the Federal Government is going to retain a certain programmatic responsibility—even after reorganization and streamlining—are there better ways of doing so? When, for example, should a program be part of an independent agency? When should it be part of a cabinet department? And when is it best to use some sort of autonomous government corporation?

We will also ask about privatization. What does it mean, when should it be used, and how should it be implemented? Are there alternative forms that might be appropriate, sometimes referred to as commercialization or marketization. And what about contracting out?

As I have stated, I intend that the hearing on the following day, May 18, will address specific proposals for agency consolidation and elimination, and program privatization. I would invite Members of Congress who have offered such proposals to contact the committee if they would like to testify on their ideas.

I should add that I also intend to have the Governmental Affairs Committee begin an examination of governmental operational issues. We need to improve the performance of government, as we reduce its size and complexity. This means a serious effort at civil service reform, as well as looking at budget system reform, program performance measurement, and financial accountability. We also need to ask which responsibilities might most appropriately be devolved to the State and local governments.

I strongly agree with the demands for cutting the size and costs of the Federal Government by eliminating obsolete and ineffective programs and agencies. I think the right way to do this is to approach the task thoughtfully and carefully—but with a clear intention to develop a plan that is both bold and comprehensive.

Of course, another way to do this would be to appoint a commission—modeled on the Military Base Closing Commission—to develop the plan, and require Congress to approve or disapprove the plan. I have in past congresses introduced legislation that would create just such a commission, and I am still willing to consider it as an alternative approach.

But regardless of what mechanism we use to develop it, we need a blueprint for the organization of the Federal Government that reflects today's priorities and fiscal realities, and that prepares us for the 21st century. The Governmental Affairs Committee will soon begin work on this task.

IN MEMORY OF SENATOR JOHN C. STENNIS

Mr. JOHNSTON. Mr. President, I would like to take a few minutes to comment on the life and career of our departed colleague and my good friend, Senator John C. Stennis, whose long and full life ended on Sunday, April 23, at the age of 93.

When Senator Stennis retired in January 1989, he had been in the Senate 41 years, 1 month, and 29 days. This made his service in the Senate longer than all but one other person in history.

When I came to the U.S. Senate in November 1972, Senator Stennis had been a Member of this body for nearly 25 years, and I had the great honor and privilege of serving with Senator Stennis for 16 years—until he retired at the close of the 100th Congress in 1989. So it is with sadness that I pay tribute to the memory of this departed colleague today.

John Stennis was a man who anyone coming to know him well would love and admire. I came to know him early on my arrival in the Senate. He was from my neighboring State, and I learned to follow his advice and leadership in certain areas of our service together.

It was also my privilege to serve with John Stennis on the Appropriations Committee beginning in 1975. We had nearly identical subcommittee assignments on the committee. He was chairman of the then Public Works Subcommittee, now the Energy and Water Subcommittee, when I came aboard and I succeeded him as chairman of that subcommittee when he became chairman of the Defense Appropriations Subcommittee in 1978. We worked together on many matters of mutual interest, especially the Mississippi River and tributaries flood control works, and other infrastructure improvements throughout the country. He requested my assistance on the Tennessee-Tombigbee Waterway project and I was pleased to help floor manage the successful completion of that massive project which opened in 1985. The New York Times called the Tenn-Tom Senator Stennis' "pyramid," and I am pleased to have had a role with Senator Stennis on this impressive project.

Mr. President, in our committee assignments and work together, I was blessed as much as a fellow Senator could be blessed by association, counsel, and advice from our departed friend.

As I mentioned earlier, it has been my honor and privilege to be closely associated with Senator Stennis for over 16 years of service together. As chairman and ranking member of the Appropriations Committee, Senator Stennis designated and commissioned me to floor manage and handle various appropriations measures including supplemental bills and continuing resolutions. He was my chairman, and I was always happy and enthusiastic to carry out his wishes on these matters.

Mr. President, John Stennis was unqualifiedly and unreservedly a gentleman in the finest American tradition. He was a man whose word was as good as his bond. He had an almost reverent sense of discretion and personal taste in his relations to the greatest affairs of the Nation as in his relations to individuals. He was indeed a giant in the Senate.

John Stennis was a Senator's Senator. He was gentle and courteous in conduct, but tough and strong in conviction and character. He personified the highest ideals of honor and integrity within the Senate.

John Stennis also possessed an extraordinary, and indomitable, fortitude, spirit, and fearless courage. I think of the several personal adversities he confronted with such wonderful dignity and demeanor. In 1973, he was shot by robbers in front of his house and left for dead. In 1983, his beloved wife of 52 years, he called her Miss Coy, passed away. In 1984, he lost a leg to cancer and was confined thereafter to a wheelchair but, Senator Stennis bore these adversities with such great strength and courage that he served as a great inspiration to us all.

We are thankful for his character, for his modesty and selflessness, for his devotion to the Senate and his family, for his outgoing good will to his friends, for his high honor as a man.

Mr. President, I traveled with a number of my colleagues to the burial services for Senator Stennis on Wednesday, April 26, at the Pinecrest Cemetery in DeKalb, MS. He was born in DeKalb County in the red clay hills of eastern Mississippi and his mortal remains were buried there in the family plot next to his beloved "Miss Coy" and near his parents. Many of the Stennises buried there were known as professional people—doctors, lawyers, teacher, and legislators. I was deeply impressed with the tribute given Senator Stennis by his son, John Hampton Stennis. He stated Senator Stennis' campaign pledge and creed when Senator Stennis ran for the Senate in 1947, after having served as a circuit court judge for 10 years. That political creed was "I want to plow a straight furrow right down until the end of my row." Obviously, Senator Stennis succeeded with that campaign pledge. And that philosophy seems to have guided his entire political career and his life. With those words John Hampton captured the spirit and philosophy of John C. Stennis.

Senator Stennis taught through example. He has left both a challenge and a pattern of conduct for citizenship, as well as public life.

What can our citizens today find in John C. Stennis to emulate? A course of conduct that inspires confidence; absolute personal dedication; noble purposes always foremost as a motive and objective; standards in public and private life unexcelled; a willingness to serve; a willingness to lead and endlessly carry the penalty of leadership, and above all else, the attainment of being an honorable man.

I believe we find here a man and a record that fully live up to the everlasting call of the poet, Gilbert Holland, who said:

God, give us men! A time like this demands
Strong minds, great hearts, true faith and ready hands;
Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honor; men who will not lie;
Strong men, who live above the fog
In public duty and in private thinking.

Mary and I extend our heartfelt sympathy to the family of Senator Stennis—his daughter, Mrs. Margaret Jane Womble, and son, John Hampton Stennis, and to his grandchildren of whom he was so proud.

CENTENNIAL CELEBRATION OF THE McKIM BUILDING OF THE BOSTON PUBLIC LIBRARY

Mr. KERRY. Mr. President, this year marks the 100th anniversary of one of the most beautiful buildings in America, the McKim Building of the Boston Public Library.

Founded by an act of the Massachusetts Legislature on April 3, 1848, the Boston Public Library was the first free and publicly supported municipal library in the world. By 1880, its original 10,000 volumes had grown to 357,440, and the legislature empowered the city of Boston to take as much land within its limits as it needed to build a new library. The trustees envisioned the new library to be a "palace for the people, and as such * * * a monumental building, worthy of the city of Boston." They hired architect Charles Follen McKim, a senior partner in the New York firm of McKim, Mead & White, to design this new edifice.

McKim wanted to create a building which would fit with its architecturally distinguished neighbors—H.H. Richardson's Romanesque Trinity Church and the Italian Gothic of the New Old South Church. He modeled the building on Henri Labrouste's Bibliotheque Ste. Genevieve and recruited such outstanding artists as American sculptors Louis and Augustus Saint-Gaudens, French muralist Puvis de Chavannes, and American painters John Singer Sargent and Edwin Austin Abbey.

Since its opening in 1895, the collection has become one of the most outstanding research libraries in the nation, including papers of many Colonia Americans and New England Abolitionists such as William Lloyd Garrison; the Sacco and Vanzetti papers, and the manuscripts and personal libraries of such figures as the famous conductor of the Boston Symphony Orchestra Serge Koussevitszky and American composer Walter Piston.

It is also a wonderfully user-friendly library, providing many services for the community. It was the first to have a formal system of branch libraries throughout the city. In addition, there are programs for seniors, for children, and for young adults and a structured lecture series which provides college-level humanities courses free to library patrons. The new Johnson addition to the McKim Building is also where I vote.

The McKim Building has recently undergone an extensive restoration. I invite by colleagues to visit its marble lions, view the mural depicting Sir Gawain's quest for the Holy Grail, and enjoy the courtyard. The statute of "The Baccahante," originally designed to be the centerpiece of the fountain in the courtyard, was deemed too scantily clad to display in public. She was hidden away in a dark, unlit recess on the third floor, unseen and unadmired, but now she is being installed in her intended home.

Joshua Bates, for whom the Great Reading Hall is named, wrote to the mayor of Boston,

> While I am sure that, in a liberal and wealthy community like that of Boston, there will be no want of funds to carry out the recommendation of the Trustees, it may accelerate its accomplishment and establish the library at once, on a scale to do credit to the City, if I am allowed to pay for the books required, which I am quite willing to do. The only condition that I ask is, that the building shall be such as to be an ornament to the City.

Mr. Bates, your wish has been amply fulfilled.

ADMINISTRATION'S PLAN TO SELL STRATEGIC PETROLEUM RESERVE

Mr. MURKOWSKI. Mr. President, for the information of the Senate, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD a letter from the Secretary of Energy to the President of the Senate that transmits administration-proposed legislation. The primary purpose of this legislation is to sell strategic petroleum reserve

[SPR] oil to fund the decommissioning of the Weeks Island SPR storage facility. I am having the proposed legislation printed in the RECORD instead of introducing it because I disagree with the policy of selling SPR oil to raise money. Let me explain.

The administration's legislation proposes three things. First, it authorizes the sale of up to 7 million barrels of crude oil from the SPR. Second, it earmarks the moneys from that sale for the decommissioning of the Weeks Island storage facility, and for other unspecified activities related to the SPR. Third, the administration's legislation allows the sale of the SPR oil to not count adversely under the budget rules. I will not speak to the asset sale issue because it is not central to my concerns.

The key policy issue raised by this legislation isn't whether the Weeks Island SPR storage facility should be drained of oil and decommissioned; that must occur. Instead, the question facing the Senate is whether we should authorize the sale of SPR oil to fund this activity and a host of other unspecified SPR activities simply because the administration is unwilling to ask for the necessary money as a part of DOE's regular budget. In a nutshell the issue is: Should SPR oil be sold to make up for a budget shortfall, or should SPR oil be kept on hand in case of an energy emergency? Before I explain my concerns about the administration's proposal to sell SPR oil, let me first describe why the Weeks Island SPR storage facility must be emptied and decommissioned.

Weeks Island is one of the five SPR crude oil storage facilities. Located in Louisiana, it holds 73 million of the total 592 million barrels of oil stored in the SPR. Weeks Island is unique among the SPR oil storage facilities. It was a commercial salt mine before being purchased by the Department of Energy and converted to an oil storage facility. The other four SPR facilities were created specifically to store oil.

In May 1992, a sinkhole was discovered on the ground directly above Weeks Island. The cause of the sinkhole was determined to be a fracture in the salt formation. Over time, the fracture has enlarged as a result of water leaking through it and into the Weeks Island storage cavern. In February 1995, a second sinkhole was discovered over Weeks Island, but it has not yet been determined if this indicates a second leak.

The water leaking into Weeks Island is accumulating at the bottom of the oil storage chamber and it is pushing the oil up. Although the leak is slow, water intrusion creates a risk of path enlargement and increased water inflow. This could ultimately result in a catastrophic water inflow, which would completely displace the oil stored in the facility. Although a remote possibility, if that occurred the 73 million barrels of oil stored in Weeks Island could enter the underground water aquifer. That would be a major ecological disaster.

After extensive engineering studies, DOE has concluded that the long-term integrity of Weeks Island cannot be assured. Thus, the most prudent option is to remove the oil while the leak is manageable. Once emptied of oil, Weeks Island will then be decommissioned by filling the facility with salt brine. Plans are being made by DOE to move the oil to other SPR storage sites beginning in the fall of 1995. As part of this activity, DOE will put a freeze wall around the facility to prevent oil leakage. Full decommissioning of Weeks Island will take 2 to 3 years.

I agree with the Department of Energy that Weeks Island must be emptied of oil and decommissioned as soon as possible. I also agree that the life extension activities should take place. As I stated before, the issue facing the Senate is not whether these should occur, but rather how they are to be paid for. More specifically, should we authorize the sale of SPR oil to fund these activities, or should the money come from DOE's budget? In deciding whether or not SPR oil should be sold, it is worth reviewing why we have an SPR in the first place.

The SPR was created by Congress in the aftermath of the 1973 Arab oil embargo. Recall that the oil embargo caused energy shortages, sharp price increases, long gasoline lines, double-digit interest rates, and economic stagflation. The SPR protects the Nation by having on hand a significant amount of immediately available crude oil.

The function of the SPR is twofold. First, it discourages foreign oil exporting nations from using the oil weapon against the United States, as they did back in 1973. Second, it protects the United States from shortages and price spikes if a supply interruption does occur. In addition, the SPR is needed to satisfy the requirements of the International Energy Program, which requires member nations to maintain oil stocks sufficient to sustain consumption for at least 90 days with no net oil imports.

Congress intended SPR oil to be used only if there is an energy emergency. The 1975 Energy Policy and Conservation Act specifies that SPR oil can be sold only if the President finds that "it is required by a severe energy supply interruption or by obligations of the United States under the international energy program."

The SPR has been tapped only once—other than for test purposes—but when used it was important that the oil be on hand. In January 1991, because of the Desert Storm war with Iraq, President Bush declared an energy emergency and sold 17 million barrels of SPR oil. Had he not done so, oil prices would have spiked, consumers would have suffered, and our economy would have been harmed.

Given declining U.S. oil production and the corresponding increase in foreign dependence, if anything we need more oil stored in the SPR—not less. Since the Arab oil embargo in 1973, U.S. crude oil production has declined by 28 percent and U.S. dependence on foreign oil has grown to more than 50 percent. Notwithstanding additions of oil to the SPR, because of our growing foreign dependence, the SPR is increasingly less capable of offsetting a supply interruption. In 1985, the SPR contained 493 million barrels of crude oil—then the equivalent of 115 days of net U.S. oil imports. Today, the SPR contains 592 million barrels of crude oil—the current equivalent of 74 days of net oil imports. Although we have added nearly 100 million barrels of crude oil to the SPR, due to our growing foreign dependence it is 41 days less capable of handling a supply interruption. Thus, I am very concerned that selling SPR oil—even as little as 7 million barrels as proposed by the administration—reduces the protection the SPR will provide in case of an energy emergency.

Let me again say that I am convinced that the Weeks Island facility must be emptied and the oil moved to other SPR storage sites. We cannot afford an ecological disaster of the magnitude posed by a catastrophic rupture of Weeks Island. But I want to point out that those actions do not require the amount of money that would be generated by the sale of 7 million barrels of SPR oil, as is proposed by the administration's legislation.

At current market rates of $20 per barrel, the sale of 7 million barrels of SPR crude oil will generate about $140 million. Yet the Department of Energy needs only $89 million to move the Weeks Island oil to other SPR storage sites and to decommission the facility. Possibly much less if lower cost transportation options were used. Moreover, only about $38 of the $89 million is actually required in fiscal year 1996 because decommissioning will take several years to complete. Even if the entire $89 million were required in fiscal year 1996, that still leaves $51 million from the $140 million sale. What does DOE plan on doing with that money? They plan on spending a large share on SPR life extension activities that need to occur, but more properly should be part of the regular DOE budget.

DOE could have proposed to use part of its budget for Weeks Island, but it elected not to. For fiscal year 1996, DOE asked for $17.833 billion, a $337 million increase over fiscal year 1995. $89 million is only .005 of the DOE's total budget, and only one-quarter of just the proposed budget increase. Surely, the administration could have found the necessary moneys within its existing budget if it really wanted to.

A fair question is where will DOE get the money it needs if we do not authorize the sale of SPR oil as requested? I say again, DOE should have asked for the money as a part of their fiscal year 1996 budget request; I believe that we would have approved it. So I turn the question around and ask the administration: If it really is so important to undertake these activities, what are the lower priority DOE programs that you are willing to forgo? You tell us which programs you want to cut.

I am also very concerned that selling SPR oil simply to raise money sets a very dangerous precedent. I greatly fear that there will be no end once we start doing this. Every time DOE's budget is put in a squeeze, there will be pressure to sell a few barrels of SPR oil to protect this or that cherished program. How will we be able to say no to other raids on the SPR piggy bank, if we allow it here?

Mr. President, the strategic petroleum reserve is this Nation's energy emergency insurance policy. I do not believe that we should cash part of it in just because DOE is unwilling to use even the tiniest fraction of its $18 billion budget to address the SPR's problems. We may need the SPR some day if another supply disruption occurs. After all, Saddam Hussein is still with us. It is for these reasons that I oppose the sale of SPR oil as proposed by the administration and I will not introduce their legislation.

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

S. —

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

(a) Notwithstanding section 161 of the Energy Policy and Conservation Act, the Secretary of Energy may draw down and sell up to seven million barrels of oil from the Strategic Petroleum Reserve to the extent that appropriations acts make the proceeds from such a sale available for the purposes specified in subsection (b).

(b) The proceeds from the sale described in subsection (a) shall be deposited into a special account in the Treasury, to be established and known as the "SPR Decommissioning Fund," and shall be available to the extent and in the amounts provided in advance in appropriations acts for the purpose of removal of oil from and decommissioning of the Weeks Island site, and for other purposes related to the Strategic Petroleum Reserve.

(c) The proceeds from the sale described in subsection (a) shall be included in the budget baseline required by the Balanced Budget and Emergency Deficit Control Act of 1985 and shall be counted as an offset to discretionary budget authority and outlays for the purposes of section 251(a)(7) of that Act, if the President designates that the proceeds should be so counted, notwithstanding section 257(e) of that Act.

(d) The authority to contract for sale of oil under this section expires September 30, 1996.

THE SECRETARY OF ENERGY,
Washington, DC, March 27, 1995.

Hon. AL GORE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a legislative proposal to "provide for the sale of oil from the Strategic Petroleum Reserve and the transfer of oil from Weeks Island, and for other purposes." This legislation, which is proposed in the President's Fiscal Year 1996 Budget, is part of the Administration's ongoing effort to reinvent the Federal Government.

The Department of Energy recently announced the planned decommissioning of the Strategic Petroleum Reserve's Weeks Island site. Water seeping into underground storage chambers is compromising the structural integrity of the facility, which holds nearly 73 million barrels of oil. As a result the Department will transfer the oil to other sites in Louisiana and Texas, and sell up to seven million barrels of oil to finance the transfer and decommissioning, and other SPR activities. Currently, the Department has legislative authority to draw down and sell Strategic Petroleum Reserve oil only under emergency authorities vested in the President or as part of a test sale of up to five million barrels of oil. New authority is required for this proposed sale.

The proposed legislation would authorize to the extent provided in appropriations Acts the sale and drawdown of up to seven million barrels of oil from the Reserve for purposes of removing the oil and decommissioning the site. Seven million barrels is equivalent to less than one day of oil imports, and would not appreciably affect the mission of the Reserve. Proceeds from the sale would be deposited in a special account known as the "SPR Decommissioning Fund" and would offset the cost of decommissioning and other SPR activities. This bill would also allow the sale proceeds to be counted as offsets to spending. Authority to contract for sale of oil under this section would expire on September 30, 1996.

We look forward to working with the Congress toward enactment of this legislation.

The Office of Management and Budget advises that enactment of this proposal would be in accord with the program of the President.

Sincerely,

HAZEL R. O'LEARY.

MARJORIE S. ARUNDEL

Mr. WARNER. Mr. President, I rise today to recognize a most distinguished Virginian, Mrs. Marjorie S. Arundel, of The Plains, VA, who has devoted her life to the conservation of our natural resources.

As a member of the Garden Club of America, Marjorie Arundel has been recognized for her conservation efforts in the Commonwealth of Virginia and across our Nation. Her tireless work has throughout more than 30 years contributed much to preserve and enhance the natural beauty.

I have had the pleasure of knowing both Mrs. Arundel and her late husband, Russell M. Arundel, for a number of years in Fauquier County. The contributions which they have made to that community are immeasurable.

In the 1960's, the Arundel family donated over 600 acres of their own land to the Nature Conservancy, which created the first Nature Conservancy preserve in Virginia. It is now known as Wildcat Mountain Natural Area. Due to her endeavors in conservation, Mrs. Arundel was awarded the Governor's Certificate of Recognition from former Governor, CHARLES ROBB, my junior colleague in the Senate.

There are several projects that are trademark Marjorie Arundel with her typical ingenuity and spirit. I recall fondly meeting with Mrs. Arundel in the 1980's regarding a highway widening north of Warrenton. Mrs. Arundel promptly brought to my attention a 200-year-old oak tree which stood directly in the proposed roadway. In an effort to spare the tree, Mrs. Arundel then met with officials from the Virginia Department of Transportation, who agreed to bypass the removal of the tree. Today, that "Loretta Oak" stands proudly and continues to live and be enjoyed by all.

As a gardener with a special interest in wild plants, Mrs. Arundel became aware that several species were being dug out of the wild and sold to commercial interests. These actions created serious wildflower depletions in the Virginia mountainside and our neighboring States. Her crusade to protect the wild populations from both trade domestic and abroad was truly a labor of love. Using her trademark ingenuity, Mrs. Arundel drafted the support of World Wildlife Fund, the Natural Resources Defense Council, and the Garden Club of America.

And with similar success, Mrs. Arundel has taken on other tough environmentally conscious issues, like pesticide and pollution abuses in the environment.

Mrs. Arundel's achievements include the Award of Honor presented by the World Wildlife Fund; an American Achievement Medal from the Garden Club of America; a Stewardship of the Land Award from the Virginia Chapter of the America Society of Landscape Architects; Communicator of the Year Award from the American Horticultural Society; and the Delacy Gray Memorial Medal for Conservation as "a conservation leader who demonstrates a love for the nature environment and a responsibility for its preservation."

There are many accolades bestowed upon this great lady, but "The Land Ethic" well speaks to Marjorie Arundel's testimony to natural integrity as, "Conservation is a state of harmony between men and land."

NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES WEEK

Mr. THOMPSON. Mr. President, it gives me great pleasure at this time to request the unanimous consent of my colleagues to have printed in the

RECORD a proclamation by the Governor of my State of Tennessee; Don Sundquist.

On March 21 of this year, the Honorable Governor Don Sundquist signed the proclamation that the week of April 17–22, 1995, shall be known in Tennessee as National Association of Retired Federal Employees Week.

Our State's chapter of this national organization is very spirited and active. Many members of this association have volunteered their time and energy to help organize relief and recovery efforts in Oklahoma City.

It is this spirit of contribution that continues to distinguish all civil servants, retired and employed.

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

Whereas the United States Civil Service Act of 1883 was signed into law by then President Chester A. Arthur, thereby creating the United States Civil Service System; and

Whereas the United States Civil Service Retirement System was created in 1920 and signed into law by then President Woodrow Wilson; and

Whereas virtually every State, county, and municipal civil service system have developed from the Civil Service Act; and

Whereas untold thousands of United States Civil Service employees have worked diligently, patriotically, silently, and with little notice to uphold the highest traditions and ideas of our country; and

Whereas thousands of Federal employees are retired in Tennessee and continue to devote inestimable time and effort toward the betterment of our communities and State.

Now therefore, I, Don Sundquist, Governor of the State of Tennessee, do hereby proclaim the week of April 17–22, 1995, as "National Association of Retired Federal Employees Week" in Tennessee, and do urge all our citizens to join in this worthy observance.

SOUTH DAKOTA SMALL BUSINESSMAN OF THE YEAR

Mr. DASCHLE. Mr. President, I may be a little biased, but I have always believed if you give South Dakotans an even break, they can make a living even under the toughest circumstances.

Yesterday I met with a man who proves my point. His name is Randy Boyd, and he was just named South Dakota's 1995 Small Business Owner of the Year by the Small Business Administration.

Randy lives in a town of 300 people called Geddes in southeast South Dakota with his wife, Sheila, and their two young children, Cassidy and Vincent.

He moved back to Geddes in 1982, after his dad had a heart attack and helped move his father's gunsmithing business from his garage into a 400-square-foot shop, where they worked together repairing guns. Later that year, Randy and his father bought a two-spindle carving machine that could make up to eight gunstocks a day.

Today, Boyd's Gunstocks Industries is one of the largest original-equipment manufactuers of gunstocks in the country. It has grown from 3 employees in 1986 to 22 full-time and 10 part-time workers, plus 10 who do contract work at home. Company sales have skyrocketed from $29,000 in 1986 to more than $1 million last year.

In 1992, with help from the Small Business Administration, Randy was able to obtain a new warehouse for raw materials, as well as new computerized equipment to improve efficiency. The business now occupies 13,500 square feet.

One of Randy's biggest challenges is finding enough skilled workers in a town of only 300 people. He is exploring the possibility of opening a second facility soon in another town in order to hire new workers and take advantage of new international trade opportunities.

In addition to creating jobs and opportunities for South Dakota families, Randy has served on the Geddes City Council. He is a volunteer firefighter and emergency medical technician. He is also a black belt karate instructor.

In South Dakota, small business has always been big business. This week, as we celebrate Small Business Week in our State, I commend the Small Business Administration for the partnerships it is forging with South Dakota business owners. And I offer my congratulations to Randy Boyd for his hard work and his outstanding contributions to his community.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, it doesn't require one to be a rocket scientist to realize that the U.S. Constitution forbids any President's spending even a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

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

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,855,154,897,104.21 as of the close of business Wednesday, May 3. This outrageous debt—which will become the debt of our children and grandchildren—averages out to $18,430.25 on a per capita basis.

TRIBUTE TO TRACY CROWLEY

Mr. BUMPERS. Mr. President, I rise today to pay tribute to a member of my staff who is leaving Washington to return to her home State of Connecticut, Tracy Crowley. Tracy came to Washington 12 years ago to work for the Small Business Committee, which at the time was chaired by Senator Lowell Weicker. I was fortunate that Tracy remained with the committee when I became chairman in 1987. In 1991 she joined my personal staff and has been a valuable member of the office for the last 4 years.

Mr. President, those of us fortunate to serve in the Senate are often blessed with loyal and dedicated staff that make us look good. However, very rarely do we show the gratitude that these staffers deserve. The hours are long, the pay, in comparison to the private sector, is not very good and the working conditions can be difficult.

There is no one on my staff that has been more dedicated or worked longer and harder than Tracy Crowley. Although she is not a native of Arkansas, she treated each and every appropriations project with great tenacity, fighting to make sure that the interests of Arkansans were preserved. There is not a fish farmer, park superintendent, forest ranger or environmentalist in the State of Arkansas that does not owe Tracy Crowley a great debt for her work on the annual Interior appropriations bills.

Twelve years is a long time for anybody to work in one place. For a congressional staff person, 12 years of service is above and beyond the call of duty. Mr. President, while I am sorry Tracy is leaving the office, I know that she will have great success in her future endeavors and I wish her the best. All of those who have worked with Tracy, and those she has so ably served in Arkansas and throughout the Nation, will miss Tracy greatly.

Mr. President, I know that you and the entire body wishes Tracy well.

OBSERVATIONS ON AGRICULTURE

Mrs. MURRAY. Mr. President, I have just returned from a trip through the agricultural region of my State and the farmers I represent are very worried about their own future and the future of their industry. By any measure, American farmers are one of this country's success stories. They have provided their fellow citizens with a stable food supply that is both safe and affordable. In fact, Americans pay less for food than any other industrialized nation in the world. They have also produced enough food to feed the world's hungry and are one of the few sectors of our economy that has consistently registered a positive balance of trade. Their success, however, seems to get lost in the discussions here in Congress and the political rhetoric of the Nation.

I visited with farmers in Pullman, Colfax, Walla Walla, and Moses Lake

and they do not feel that the rest of the country or the U.S. Congress appreciates their efforts. After reviewing the spate of proposals advanced this Congress, I am forced to agree with them. There seems to be a misconception around here that farmers are the only beneficiaries of the commodity programs. Nothing could be further from the truth. In exchange for income protection, the farmers that sign up for the program agree to accept production controls and numerous other guidelines and regulations on the operation of their farms. While these conditions were often put in place to achieve a specific public policy goal, it is important to remember that it is an additional cost to farmers and it is a cost they will not be able to recoup from the sale of their commodity.

Because wheat farmers face many difficulties in providing the rest of us with our food, it is easy to understand why almost 90 percent of them in Washington State sign up for the program. In addition to a regulatory environment that they often consider unfavorable, they face unfair trading practices by our competitors, nontariff trade barriers, escalation costs, and a price that is too low to cover their costs of production. On top of all this, weather conditions often wreak havoc on all the producers' hard work. Every economic analysis I have seen paints a very bleak picture of the future of rural America. I believe the conditions of American agriculture justify our continued support of the commodity programs, the export promotion programs, and the conservation programs.

The gloomy conditions in farm country are not the only reason to support these programs, however, and I am here talking on the floor of the Senate because I believe all Americans are well served by these programs, not just farmers. In my State, many of the jobs in urban areas depend on the exports provided by agriculture. If we, as a nation, wish to continue to guarantee that we have a stable food supply and continued economic growth in our cities, it is in our interest to continue to adequately fund this Nation's agricultural program. I know that I will have to continue to make that point in the urban areas of my State as well as here in Congress so that there will be a greater understanding of just how critical our agricultural industries are to all of us. We need to keep these things in mind as we consider the budget, the farm bill, and other legislation that impacts farmers.

ISRAELI INDEPENDENCE DAY

Mr. PRESSLER. Mr. President, I am pleased to join my colleagues and millions around the world in celebrating Israel's 47th year of independence. Israel's rapid economic progress and strength are testimony to the vigilance and determination of the Jewish people.

As we celebrate nearly five decades of Israeli autonomy, we call to mind the many of today, yesterday, and centuries past who share a common bond: The dedication of their lives to establish and maintain a country that every Jewish person can call home. As Israeli President Ezer Weizman recently stated, "The State of Israel achieved its position due to the fact that its people aimed for peace and fought for it, despite all difficulties." For the Jewish people, adversity has served as an incentive rather than a deterrent. According to Prime Minister Shimon Perez, "Israel will continue her quest for peace. At the same time, she will fight those who fight peace." As friends, the people of the United States salute the conviction and perseverance the Jewish people as we, on this occasion of independence, reaffirm our shared belief in Israel's sovereignty.

The tiny democracy of Israel thrives in a region historically barraged with anti-Western sentiment. Since its inception, Israel has experienced regional opposition from dictators such as Egypt's Gamal Abdel Nasser and Iraq's Saddam Hussein. Yet Israel has flourished amidst such hostility. Through open, democratic elections, majority rule representation, and the support of her allies, Israel has proven that a democracy can succeed in a region of otherwise undemocratic nations. Today we applaud the tenacity and the vision of the Israeli people and their success in making democracy work for nearly half a century.

Israel's charter reads that the new state "will rest upon the foundation of liberty, justice, and peace as envisioned by the prophets of Israel, and that it will be loyal to the principles of the United Nations Charter." Almost immediately, President Truman recognized the similarity between the United States Constitution and the Israeli proclamation and became the first foreign leader to endorse the newly formed state. With the help of allies like the United States and the pathbreaking leadership of individuals such as Menachim Begin and Former Egyptian President Anwar Sadat, Israel has been able to maintain and even expand its strategic alliances throughout the world.

Mr. President, the State of Israel has made tremendous progress over the past 47 years. Israel has emerged as a scientific and technological leader. Last year, the Israeli economy grew more than 7 percent—a growth rate higher than the more advanced economies. This is clear evidence of Israel's commitment to progress, and the willingness of countries all over the globe to recognize Israel as a viable trade partner. The Israeli people have repeatedly looked beyond the events of the day and maintained a focus on the need building a strong scientific and technological base. Neither terrorism nor war has diminished their desire to maintain a strong, independent nation.

Without a doubt, the people of Israel could not have flourished so quickly without the support of friends and family living abroad. By conveying their support for Israel, Jewish people living in the diaspora have demonstrated their commitment to a Jewish homeland. Israeli Foreign Minister Shimon Peres recently stated that, "No nation has been helped as much by its brothers and sisters." Americans of all religions and creeds are brothers and sisters of the people of Israel. Our nations share a bond of similar values. Our experiences are their lessons. Israel and the United States of America have demonstrated that a democratic society can withstand the forces of hate, oppression, and terror. That is why we have embraced Jews living within this Nation and have pledged our support to their homeland.

In spite of a housing shortage, Israel maintains an open door to Jewish immigrants. The Israeli Government has made it clear that it will not refuse the admission of Jewish immigrants due to external political pressures. To do so would contradict a major principle of the Jewish faith—that "all Jews are responsible for one another." President Weizman recently reaffirmed this belief by insisting that, "The significance of sons and daughters coming to Israel in large numbers to feel and breathe the atmosphere cannot be overemphasized. Israelis, on their part, will take them to their hearts." This long-standing policy has been a beacon of hope for the 600,000 Soviet and 50,000 Ethiopian Jews who fled their besieged countries and settled in their new homeland.

Today's celebration of Israeli independence should bring to mind the determined spirit of the Jewish people. After centuries of struggle and persecution, the Jewish people finally have a cultural, political, and religious sanctuary. To our friends in Israel, we Americans share in your continuing efforts to achieve regional peace and the further economic progress of your homeland. The celebration of Israeli independence is a celebration of the permanence of democracy. We recognize that no force can defeat your spirit of self-determination. In the words of Foreign Minister Shimon Peres, "neither war no holocaust nor threats nor animosity could cut the energy of your people."

Mr. President, today is a great day for all Jewish people and all people in democratic societies. The nation of Israel stands as a great tribute to the fortitude of the human spirit. I am pleased to join with my colleagues in wishing the Jewish people, especially those in my home State of South Dakota, a happy and peaceful 47th Yom Ha'atzmaut.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 956, which the clerk will report.

The assistant 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) Abraham amendment No. 600 (to amendment No. 596), to provide for proportionate liability for noneconomic damages in all civil actions whose subject matter affects commerce.

(3) Kyl amendment No. 681 (to amendment No. 596), to make improvements concerning alternative dispute resolution.

(4) Hollings amendment No. 682 (to Amendment No. 596), to provide for product liability insurance reporting.

Mr. GORTON. Mr. President, I yield 10 minutes to the Senator from Arizona.

Mr. KYL. Mr. President, I thank the Senator from Washington for yielding. First, I want to begin by saying that the comments of the Senator from Georgia just now are right on the mark in terms of the amendment that we will be voting on. I certainly subscribe both to what he said and what the Senator from Washington has previously said about this.

My conversation, Mr. President, this morning, has to do with a very specific amendment which we will be voting on, the Kyl-McCain amendment, which will have the effect of striking section 103 of H.R. 956.

This amendment preserves State law on alternative dispute resolution procedures and ensures the plaintiffs and defendants are treated equally through the ADR, or alternative dispute resolution process.

The amendment strikes section 103, which says when alternative dispute resolution procedures are employed, these procedures are enforceable only against the defendant, not against the plaintiff. Currently, of course, under the State laws under which this would be applied, ADR provisions are equally applicable to the plaintiffs and to the defendants. Of course, it should remain that way.

Mr. President, a fundamental tenet of American jurisprudence is that all parties go into court with equal rights. As a matter of fact, Americans, I submit, would not submit their disputes, their lives, and their fortunes to a decision by the judge or a jury if they knew that the deck was stacked against them when they began.

That is precisely what this section 103 of the bill does today. That is why we are striking this section.

What this section says is that when a State has an alternative dispute resolution procedure, the parties may use it. Well, that adds nothing to current law. That is the law of the States. Parties can take advantage of those alternative dispute procedures, and they should.

As a matter of fact, we are trying to encourage more alternatives to proceeding through the actual trial of the case. The second part of section 103 provides for the notice by one party or the other that that party wants to invoke those procedures. Again, this amendment or this bill changes nothing in that regard.

The part that changes the law and that we wish to strike is titled "Defendant's Penalty for Unreasonable Refusal," meaning unreasonable refusal to go through the alternative dispute resolution process. Defendant's penalty; there is no concomitant plaintiff's penalty.

In other words, the authors of this section have provided that, although the defendant would suffer the consequences of refusing to go through alternative dispute resolution, if the defendant wishes to go through that process—and we all encourage them to do so—and the plaintiff unreasonably refuses to do so, there is no penalty on the plaintiff.

Mr. President, that is fundamentally unfair. It is exactly the kind of thing the American people wish Members to reform in this litigation process that we engage in in our country.

The whole idea of reform here, the whole notion of what we are debating, is fairness. This provision would inject a fundamental element of unfairness where one party is penalized for not going forward with alternative dispute resolution, and the other party suffers no adverse consequences at all. It is fundamentally unfair.

Now, what the provision states is that the court shall assess reasonable attorney's fees and costs against a defendant who refuses to proceed; final judgment is entered against that defendant that that refusal was unreasonable or not made in good faith.

That is typical of the State alternative dispute procedures here, that where either parties says, "Let's go to alternative dispute rather than going all the way through trial", and the other party says, "No, I do not want to do that," and it turns out the other party loses and the court finds that that party's refusal to go through the alternative dispute resolution procedure was unreasonable or not made in good faith, then costs and attorney's fees can be assessed against that losing party. That is the law in many States today. We should preserve that law.

This section of the bill changes that procedure in State law. It says, "No, even though you say that the losing party who refuses to go through the alternative dispute resolution in good faith should have a penalty, we are going to strike that in the case of only one-half of the parties, the plaintiff." The plaintiff gets a free ride. The plaintiff can refuse alternative dispute resolution in bad faith and still not be penalized. A defendant who refuses alternative dispute resolution and who loses, and the court determines he has done that in bad faith, has a penalty rendered against him.

Mr. President, I could argue either way that there should or should not be a penalty. I do not want to change the State law in that regard. That is why, instead of saying that the penalty would lie to both the defendant and the plaintiff, which we could have done with this amendment, we have simply said "Let's strike the section and leave State law the way it is. State law treats both parties fairly. That is the way it should be."

So I urge all my colleagues who for the last several days have been arguing that this is not something that the Federal Government should be involved in, that we should let the States experiment, that we should let them decide their own procedures here—I urge them to support this resolution, my amendment, because my amendment allows the State law to be preserved as it is today with no change on alternative dispute resolution. I think we want to encourage alternative dispute resolution. We will certainly not be encouraging it if we say we believe in it but only if it is a stacked deck, only if it can be used against the defendant but not against the plaintiff.

It is fundamentally unfair, and we should never be a party to changing the law of the States in a way that will result in unfairness to one side or the other in litigation. So I urge my colleagues when we vote in about an hour on these various amendments to the bill to support the Kyl-McCain amendment to strike section 103 and thus preserve State ADR proceedings and preserve the balance between plaintiffs and defendants proceeding under those procedures.

I yield the floor, Mr. President.

Mr. HEFLIN. I wonder if the Senator can respond to a question or two?

Mr. KYL. I will be happy to reply.

Mr. HEFLIN. I have come to somewhat agree with the Senator in regards to this. I have always been sort of puzzled as why that was put in there.

Of course, in original ideas on alternate dispute resolution methods, some of the States have had what they call court-annexed arbitration, and they put a penalty relative to the failure to bind on the claimant, plaintiff, when this occurs, which raises an issue that it could be a violation of the seventh

amendment, of the right to a trial by jury, by saying anything is mandatory under the concept of court-annexed provisions. Previous bills, as I recall, said if the judgment that occurred was less than what the award had been in an arbitration proceeding which is a part of the alternate dispute resolution, that then plaintiff would have to pay the reasonable attorney's fees and court costs and so on. And that raised the question of whether that was causing a claimant to be deprived of the right of trial by jury.

This language here has, in section 103(a)(1), that they can have an offer to proceed to voluntary, nonbinding alternate dispute resolution. If it is voluntary and nonbinding, I do not understand why you would, in effect—unless it is sort of an effort to have an encouragement for defendants, realizing that claimants would be the ones who would probably want a nonbinding, voluntary alternate dispute procedure to start in order to more rapidly dispose of their claims. In particular, in the States that have had procedure, they usually have a dollar amount limitation.

Actually, this is already authorized under existing law which we voted on several years ago, the Biden Civil Justice Act. I do not remember the specific title and name of it, but it authorized nonbinding alternate dispute resolutions in the Federal courts. You could have such a proceeding under this existing statute.

So, I have been puzzled why proponents attempted to have the provision for a possible defendants' penalty. The only reason I see is I thought they were probably doing it for window dressing, purely for the purpose of trying to say we are giving something to the claimant; while we are taking away 100 different things, we are going to give you 1 with the alternative dispute resolution provision.

Of course they use the word "unreasonable" in this section which allows for some leeway on behalf of a defendant.

But overall, in fairness, I sort of tend to support the Senator's amendment here to strike the provision from the underlying Gorton substitute. I do not know what the others will do but as it is right now, unless I am convinced otherwise, I may well vote with you.

Mr. KYL. I appreciate the comments of the Senator from Alabama. That helps to give us more background on this as well. I think he is absolutely correct, that as a matter of States rights many States have these procedures today. If they have them, we leave them in place. But to the extent that we change them by saying in effect they only apply to one party, we, at the Federal Government level, will have injected an element of unfairness and I just do not think we want to be a party to doing that.

I know the Senator from Washington wishes to proceed so that is all I will say about that, but I appreciate the comments of the Senator from Alabama. I certainly agree with him on that.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, we are at this last half-hour or 45 minutes before a series of votes, speaking to several amendments: The underlying broad amendment by the Senator from Michigan to extend the joint liability provisions of this bill to all litigation; the amendment proposed by the Senator from Arizona and discussed during the course of the last few minutes; and an amendment by the Senator from South Carolina on insurance data collection and reporting requirements.

While he spoke briefly to that last night, I think it important to outline for the benefit of my colleagues who will soon be voting on it what that amendment actually does. The amendment is not so much an insurance reporting act, though it does add inevitably to the huge amount of paperwork with which our society and economy is already burdened, as it is another skillful attempt for all practical purposes to kill this bill, this whole idea.

What the amendment would do would be to sunset all of the substantive provisions of the proposal which is now before us. I want to repeat that. It would sunset all of them.

I am sorry. Mr. President, I apologize. The notes I have here—the Senator from South Carolina has crossed those provisions out of this provision. Now, it simply requires costly and unnecessary reporting requirements and institutes a brandnew Government bureaucracy.

It stems from the proposition from the opponents to this bill that the only goal of the bill is to lower insurance costs. Yet, I do not believe that either the Senator from West Virginia or I have ever included lower interest costs as one of the rationales for the passage of this bill. We hope that it might well be an incidental impact of the passage of the bill. But it is not central to our arguments.

To go back to the beginning, each of us has said that it is designed to improve the competitiveness of American businesses, large and small, to increase economic growth and to create more jobs, to make the present system more fair by making it more open to small claims through an alternative dispute resolution mechanism and by creating a uniform and in many cases in many States a more generous statute of limitation on claims and to reduce overall liability costs. But whatever the situation may have been 25 or 30 years ago, overall liability costs are a large universe, of which insurance premium costs are only one and one increasingly less important element. Why? For three reasons:

First, in many States, punitive damage awards cannot be insured against. It is not true in all cases but it is true in many States. It is the arbitrary nature of punitive damage verdicts, which is a major goal of the reforms contained in this bill.

Second, several years ago through a solution developed in the Commerce Committee, of which both the Senator from South Carolina and I are members, a market solution was created for the nonresponsiveness of insurance premiums to market changes by a Federal Risk Retention Act which allows small businesses to pool themselves together to self-insure in the area of product liability, an act which has been utilized by thousands of small businesses across the country. So they are outside of the insurance field entirely.

Finally, of course, most very large businesses, many of the business enterprises which have abandoned product lines or decided not to continue to develop new product lines, are self-insurers. They do not go to insurance companies to insure themselves against product liability costs. They make their own business judgments about what they will develop and what they will market.

My friend and colleague from West Virginia is constantly brought up as being originally a sponsor of a bill like this a number of years ago. It is true that he was. But as I trust is the case with all of us, changing circumstances and greater thoughtfulness change our minds on particular courses of action. It has changed my mind on the substance of this bill. There was at least one previous product liability bill in the Commerce Committee which I opposed in the committee, one quite different from this. But when Senator ROCKEFELLER, several Congresses ago, offered an amendment like this, the product liability bill that we were dealing with included strict limits on liability, caps on pain and suffering damages, which this one does not. We did not have the Risk Retention Act in existence at that time. It was a much better argument at that point that this proposal would have a clear cost-cutting effect on insurance.

Mr. HEFLIN. Mr. President, will the Senator yield for a question?

Mr. GORTON. Yes; I am happy to yield for a question.

Mr. HEFLIN. I was interested in what the Senator had to say about whether the Senator really does anticipate that the passage of this bill would reduce insurance costs. The Senator has given a couple of reasons why certain things are outside. But as I understand it, one of the main ideas has been that this would cut transaction costs, which I question, because it bifurcates a trial requiring additional hearings. But basically, will the Senator agree that where companies have liability insurance that there is in practically all policies no limit on transactional costs? The defense that occurs to the

company as a result of liability insurance is borne by the insurance companies. Therefore, I raise the issue.

One of the arguments is the cost. I have heard the Senator talk about it—defense fees, the deposition fees, and those things from the defense side which really would be borne by the insurance companies. Therefore, it would have some relationship to the overall cost of insurance, would it not?

Mr. GORTON. I am not entirely certain what the question from the Senator from Alabama consists of. But I think I understand it. I will do the best that I can to answer it.

Yes; one of the goals of this bill is to reduce transaction costs. It is to see to it that more of the money that goes into the legal system goes to actual victims, whether product liability as the bill is now more inclusive, medical malpractice. We find it an absolute scandal that for every dollar that goes into the product liability system only 40 cents or so gets to victims. And 60 cents goes to transaction costs, most of which goes to lawyers.

We have not separated out how much of those lawyer fees are defendants' fees. That is a matter I suspect of indifference to the victim. It is 60 percent. Of course, for most insurance policies there is no limit on the amount that the insurance company will spend in defending the defendant in such a case. There hardly could be. Under those circumstances the claimant's attorney would simply drive the engine until that level had been reached and then no longer would have any opposition.

What we are attempting to do in this bill is, one, create more situations in which there was a prompt settlement through something less than full litigation through the ADR provisions in the bill; second, by limiting to in some respects consistent with the Constitution—in fact, a response to the invitation from the Supreme Court of the United States under the Constitution to do so—somehow limiting the possibility of huge punitive damage verdicts causing cases to settle earlier, and at a more reasonable price and at a lower transaction cost; third, of course, simply doing more justice in the system. We hope that it will modestly cut back on the number of lawsuits that are brought in the first place, especially frivolous ones, and cause the meritorious lawsuits to be settled more quickly and even when they go to trial to be settled less frequently with lengthy appeals to appellate courts.

This Senator did not say, I report, Mr. President, to my friend, that we did not believe that there would be any reduction in liability insurance costs. The Senator said that we were not utilizing that, we were not making that prediction as an argument in favor of the bill. The argument in favor of the bill is greater justice, especially for smaller claims, the increase in economic growth and the creation of jobs, and the encouragement of the development of new and improved products on the part of the American business community.

If you ask this Senator does he think that liability insurance costs will go down, he does. He certainly hopes so. But the point is that if they do not, unlike the situation 8 or 10 years ago, those who have to purchase the insurance or who face product liability claims will have an alternative, an alternative that we created for them in risk retention pools. If the competitive market among big insurance companies does not lower the costs, those risk retention pools certainly will, and they are not a subject of this amendment.

Mr. HEFLIN. I might inquire of the Senator if there was testimony—I do not know whether it was this year or last year—from the American Insurance Association, one of their officers, which basically said that passage of the bill would not, I repeat, not, bring about any reduction in liability insurance premiums? Some words are that there would be insurance cost savings. I do not remember right offhand the person who said it, but I remember seeing that in a previous report of the Commerce Committee.

Does the Senator remember that testimony?

Mr. GORTON. I do not remember that testimony this year. I believe the Senator from Alabama is probably correct about some such testimony for years past. But to exactly the extent that that is true, the amendment which we are discussing is irrelevant and has no impact other than probably to drive up costs because it drives up the paperwork involved in the entire system.

Mr. HEFLIN. In regard to the alternate dispute resolution, if I recall right—I do not have it before me right now—there was a GAO study which indicated that they thought the bill would increase the transaction costs and that one of the reasons for it was the way the alternate dispute resolution provision was contained in the bill. Does the Senator recall that testimony?

Mr. GORTON. I am sorry; I was distracted.

Mr. HEFLIN. I was speaking of the GAO report. I do not have it before me. But as I recall the GAO report indicated that the provisions of the bill—maybe it was a predecessor of it—in their judgment would not reduce transactions costs, and that one of the reasons was they felt it could possibly increase it was because of the alternate dispute resolution methods that were there—increasing it another hearing as well as the provisions dealing with bifurcation, separate hearings that you would have to go through—thereby bringing about additional lawyer's fees in regards to those proceedings, particularly on the defendant's side where there is an hour billable approach.

Does the Senator recall that?

Mr. GORTON. I have to say to my friend from Alabama I do not recall that. As the alternative dispute resolution provisions in these bills have changed from year to year, certainly no such report has been filed in connection with the alternative dispute resolution proceedings, or, rather, sections in this bill.

I see, Mr. President, it is now 5 minutes after 12. I know my colleague from West Virginia wishes to speak, and I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, as one of the managers of what was once solely a bill to reform our product liability system, I wish to speak to my colleagues, those who share in a general sense the purpose of what we are trying to do here, about at least my views on the business before us.

At 12:15, in 10 minutes, the Senate will vote on three pending amendments to this bill, and then vote on the first of two cloture motions. The second cloture motion vote is expected at 2 o'clock, maybe 2:15. I am not sure.

I am going to make a motion to table both the Abraham amendment on joint and several liability and the Kyl amendment that tries to delete the alternative dispute resolution section of this bill, alter it in ways which I find distasteful, but the message I wish to get across most strongly is that I will vote against both cloture motions. I will vote against the one at—whenever the first one comes, and I will vote against the second one. I will not vote for one and against the other, against one and for the other. I will vote against both. I want both to fail because there are those of us who believe that this bill needs to be kept to product liability—and I think there are many of us—so that we can at least get some tort reform accomplished, which we will not in any other event. Those folks need to vote in their conscience, if that is where their conscience dictates, against both cloture motions, to vote no on both cloture motions. And I hope anybody interested in achieving actual results on product liability reform will do the same and vote no on both cloture motions today.

This past week, frankly, has been rather astonishing to me, Mr. President. One would think, when a majority of Senators get the chance finally, without a filibuster on the motion to proceed, when we finally get to work on a bipartisan, balanced, focused piece of legislation to deal with this very serious problem, that is precisely how they would spend their time here.

But, no, instead, we have watched Senator after Senator come eagerly to the floor to add one more ornament to the tree. As I have said before, anyone who has ever decorated a Christmas tree knows that if at some point you put too many ornaments on, too many bows on one side of the tree, that tree is going to fall over and crash down and you lose the ornaments, the tree, the Christmas spirit, and it is a terrible vacation. That is the situation I see before us right now. And the amendments from Senators ABRAHAM and KYL are going to assist in sending this tree to the ground.

The Senate has had absolutely no opportunity that I know of to consider whether the joint and several provisions in the product liability bill make sense for the rest of civil actions. I do not know of any hearing on the topic. I do not see a bill from the Judiciary Committee on the topic, or a report laying out the arguments on an idea as significant as this one. Yes, the House of Representatives made a sudden decision to throw the idea into their stew of legislation on tort reform that passed a couple weeks ago. But this body is supposed to keep a standard of actually thinking about what it is on which we vote. We pride ourselves on that. And the idea of deleting the section in this bill that promotes alternative dispute resolution is appalling to me.

Maybe I need to restate the obvious. Legislation becomes law when interests are balanced, when legislators work out difficult problems together, when problems are addressed with practical remedies.

The alternative dispute resolution provision in our product liability bill is there for these reasons. Here is one of the parts of this bill designed solely and specifically to deal with one of the most maddening problems in product liability. Victims have to wait too long for compensation. The system is too slow and too inefficient. If I am a small farmer from West Virginia or some other place and I do not have any money, and I do not have any money to hire lawyers or any money to pay for time for 3 years to go by, I can avail myself of the alternative dispute resolution.

We want to encourage that small farmer who does not have the resources, the small business person, the person of very modest means. And this is the way we do it, by allowing him this particular advantage. That is why we want to promote alternative dispute resolutions in a way that will speed things up so that that small farmer will, in fact, come in and probably just speak for himself and the case will be simply handled right there on the spot, no lawyer, no problem, no time, no expenditure of money.

I really do not think we have to apologize for devising an approach that is slanted toward the victim when we are talking about encouraging them to resolve their cases earlier. Remember, they have wait to 3 years now. We are trying to encourage people to get that amount of time down.

So in the strongest possible terms, I urge my colleagues to defeat both of these amendments. And I urge my colleagues, again, to vote against cloture, not just the first cloture vote but also the second one that will take place this afternoon at about 2 o'clock.

We now have a bill that has become deformed, disfigured. A small group of Senators has refused to follow the discipline of working out with the rest of us who are interested in enacting product liability reform what we will do to accomplish that. Until they do, we should bring this bill to a halt.

A majority of Senators are clearly interested in a balanced, moderate product liability reform bill—I am convinced of that; I deeply believe that—that serves consumers, victims of defective products, and business in a balanced way. We still have that opportunity. The pending cloture votes will demonstrate what it takes to succeed.

Mr. President, I thank the Chair and yield the floor.

Mr. HEFLIN addressed the Chair.

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

Mr. HEFLIN. Mr. President, I am delighted to hear Senator ROCKEFELLER state that the way the bill stands now, it is deformed and disfigured. That reminds me that this bill, as it stands right now, is pretty much similar to what the House passed. I do not think whatever we pass here in the Senate, when it goes to conference, is going to come out much different from the House bill. I think we know that the Speaker over there has great influence.

I just feel that, basically, whatever we do here which passes the Senate and goes to conference will reflect the Speaker's position on this overall issue. I think the key battle is the battle here in the Senate and the Senate's role to be deliberate and to prevent unwise, unfair legislation.

Now, if there is a disfigurement and a deformity by extending the language pertaining to punitive damages, by extending the language eliminating joint and several liability to cover all civil actions, then that is a recognition that there is a fault with that extension, there is a fault with the overall underlying principle that is being brought forth here in regard to punitive damages and also to eliminating joint and several liability.

The PRESIDING OFFICER. Under the order, a vote is to occur at 12:15.

Mr. HEFLIN. Mr. President, I ask unanimous consent that I be allowed to proceed for 3 more minutes.

Mr. GORTON. No objection.

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

Mr. HEFLIN. I send to the desk and will ask to have printed in the RECORD a letter, dated May 25, 1990, to the Honorable RICHARD H. BRYAN, then chairman of the Subcommittee on Consumer Affairs, Committee on Commerce, Science, and Transportation, pertaining to the GAO study.

One of the questions that he asked was:

In your research of the current product liability system, have you found any evidence that would support the argument that the current tort system has led to an increase in transaction costs?

And they ended up saying: "We believe that S. 1400"—which was a predecessor bill—"is unlikely to reduce transaction costs in product liability suits."

I send that letter to the desk and ask unanimous consent that it be printed in the RECORD.

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

GENERAL ACCOUNTING OFFICE,
Washington, DC, May 25, 1990.

Hon. RICHARD H. BRYAN,
Chairman, Subcommittee on Consumer, Committee on Commerce, Science, and Transportation, U.S. Senate.

DEAR MR. CHAIRMAN: Enclosed are my responses to your questions regarding my February 28, 1990, testimony on product liability. If you have additional questions or if I can be of further assistance, please call me, or Cynthia Bascetta.

Sincerely yours,

JOSEPH F. DELFICO,
Director, Income Security Issues.

Enclosure.

1. In your research of the current product liability system, have you found any evidence that would support the argument that the current tort system has led to an increase in transaction costs? What are the major factors that contribute to the level of transaction costs? Do you believe that S. 1400 would reduce transaction costs in product liability suits?

In our review, we did not collect data over time to assess whether the current tort system has led to an increase in transaction costs. We reviewed a 1987 study by the Rand Corporation, however, that reported that between 1980 and 1985, the annual growth rate for the amount of tort litigation was about 3 or 4 percent. Expenditures for this litigation grew at about 6 percent for automobile-related litigation and about 15 percent for other tort claims, including product liability.[1] Although the literature is replete with general concerns about the costs of litigation, we did not find any other research documenting trends in transaction costs associated with the current tort system.

The major factor affecting the level of transaction costs is the length of litigation. As we reported, cases we reviewed took years to process—almost 2-½ years to move from filing of a complaint to the beginning of the trial. On average, appealed cases took 10 more months. In our review, we noted two possible reasons for lengthy litigation in product liability cases. First, the law has

[1] Hensler, Deborah R. et al, "Trends in Tort Litigation: The Story Behind the Statistics," Rand Corporation, Institute for Civil Justice, Santa Monica, CA, 1987, p. 25.

been evolving in many states, which may increase the complexity of the legal decision-making process. Breaking new ground and establishing new precedents, for instance, take more time than cases where the law is clearer and requires little deliberation or interpretation. Second, both plaintiffs and defendants have little incentive to cut corners. Although plaintiffs have incentives to expedite the process so that they can receive compensation, their attorneys may want to invest substantial resources in developing cases to deter manufacturers from making harmful products. Defendants may prefer not to settle cases to deter further suits over the same product. Pretrial discovery—a time-consuming and expensive feature of litigation—therefore becomes an important part of product liability suits for both parties.

We believe that S. 1400 is unlikely to reduce transactions costs in product liability suits. For cases that are litigated, the procedural features of the tort system would not be changed by the bill. It is also not clear that the bill provides strong incentives for alternative dispute resolution, which could cut litigation costs. Moreover, the alternative dispute resolution mechanisms that may be used are left to the discretion of the states. If these mechanisms are not binding, then they may add to rather than substitute for litigation. If this happened, costs could actually increase.

2. Your study found that product liability cases were quite time consuming:

A. Could you please identify the specific factors that make these cases time consuming?

B. Are there any benefits to the judicial process for having prolongated cases? For example, is lengthy litigation ever justified in order to insure an accurate record in a complicated case?

C. What are the disadvantages for having lengthy litigation?

D. Do you believe S. 1400 would reduce litigation time in product liability cases?

A. Specific factors that make these cases time-consuming are the steps required in the legal process. In the vast majority of cases we reviewed, we noted that defendants often used the maximum amount of time legally required. Delays caused by defendants were also common. In most cases, manufacturers have little incentive to settle cases, as we said in response to the first question, although some may be concerned about adverse publicity regarding their products.

In the typical case in our review, the defense was first granted 30 days to respond to a petition. The defense typically argued, at the end of the 30 day period, that the plaintiff did not use the product or that negligence was the cause, at least in part, of the harm. This began the legal process known as discovery, in which the burden was on the plaintiff to build a record by collecting data on product design, specifications, and other (often proprietary) information from defendants. The preparation of interrogatories—testimonial evidence from eyewitnesses, expert witnesses, and others—was another lengthy process needed for the record. We also found frequent motions to extend and delay court dates.

B. In any case, a complete and accurate record would be necessary to ensure a fair legal outcome. In this sense, lengthy litigation and its attendant costs might be justified. Generally, however, we believe litigation should be shorter, and as a result, we would expect lower overhead costs and higher net compensation for injured parties. In our report, we concluded that we cannot determine the degree to which the benefits of the judicial process balance substantial administrative costs. We also noted that benefits thought to accrue from the judicial process include providing incentives for product safety. The Rand Corporation noted in its 1987 study that "there is no ready measure of the inherent reasonableness of the system's transaction costs. Especially when we focus on the tort system's goal of deterrence, we might encounter circumstances in which we find very high transactions costs acceptable."[2]

C. There are two primary disadvantages of lengthy litigation. First, as we have already discussed, time greatly increases costs. Second, protracted litigation means that injured parties wait longer for compensation.

D. S. 1400 will probably not reduce litigation time in product liability cases because discovery and other legal processes would not be affected by the bill. And, because the effect of S. 1400 on alternative dispute resolutions is unclear, we cannot predict the extent to which lengthy litigation could be avoided if product liability reform were enacted.

3. Your study indicated that the data needed to give a complete evaluation of the effects of tort reforms is not readily available. Do you have any recommendations on how the relevant and necessary data might be collected? If so, what is your projection of the length of time it would take to collect such data?

When we began our review, we found that with the exception of ongoing work at the Rand Corporation, very little data had been gathered in any systematic way about the outcomes of tort reforms. According to researchers at Rand, neither critics nor defenders of the civil justice system have much solid evidence to support their views. In fact, the legal system is notorious for its fragmentation and dearth of records on finances and workloads. Our review confirmed serious inadequacies in available databases, methodological difficulties in designing rigorous studies, and an overall lack of empirical evidence that impede efforts to evaluate the effects of tort reforms.

For a comprehensive assessment of research prospects in this area, we refer you to the following Rand Corporation publications: (1) Hensler, Deborah R., "Researching Civil Justice: Problems and Pitfalls," Summer 1988; (2) Reuter, Peter, "The Economic Consequences of Expanded Corporate Liability: An Exploratory Study," November 1988; and (3) Carroll, Stephen J., "Assessing the Effects of Tort Reforms," 1987.

Mr. HEFLIN. Senator HOLLINGS is unable to be here. He was called down to the White House on a budget matter.

In regard to his amendment, he has asked that I point out that his same amendment was accepted by unanimous consent last year. The proponents of the bill, Senator GORTON and Senator ROCKEFELLER, accepted the amendment by unanimous consent in the last Congress. So I am just repeating that at the request of Senator HOLLINGS relative to this matter.

But overall, this bill is a very unfair bill. It has added to it to make it much more encompassing, to make this matter of punitive damages now extend to other suits far into what it does.

There are other provisions, such as the Abraham amendment, that, in effect, extends the elimination joint and several liability to all sorts of suits. Now, in our courts, you either have criminal cases or you have civil cases. Under this, it extends it to all civil suits brought under any theory whatsoever. So it is very broad and comprehensive, and very much covering almost every conceivable type of civil lawsuit that you might have, including such things as State antitrust laws.

Sexual harassment in State laws would be covered; disability protections in State laws; Americans with disabilities would be covered, as it would apply, by State laws relative to this; automobile accident cases, all sorts of things in regard to it.

It is an extremely broad and encompassing bill. I think it ought to be defeated.

ABRAHAM AMENDMENT NO. 600 ON JOINT AND SEVERAL LIABILITY

Mr. LEVIN. Mr. President, I intend to vote against the Abraham amendment to extend limitations on joint and several liability for noneconomic damages to all civil actions.

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

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

This bill and this amendment, however, do not recognize that in the real world, multiple wrongdoers may each cause the same injury. They insist that responsibility be portioned out, with damages divided up into pieces. Under this approach, the more causes the event can be attributed to, the less each defendant will have to pay.

Unless the person who has been injured can successfully sue all guilty parties, he or she will not be compensated for his or her entire loss. The real world result is that most plaintiffs will not be made whole, even if they manage to overcome the burdens or our legal system and prevail in court. Wouldn't it be more fair to say that any wrongdoers who caused the injury should bear the risk that one of them might not be able to pay its share? Put another way, isn't it more fair for all of the wrongdoers who cause an injury to bear this risk than for the victim to carry the burden of uncompensated loss?

[2] Ibid., p. 25.

More than 30 States either maintain the doctrine of joint and several liability or have come up with creative approaches to address the potential unfairness of imposing joint and several liability in some cases without unfairly hurting the injured party. Because these State laws are more favorable to the injured party than the approach adopted in this amendment, so they would all be preempted.

As far as I am aware, no hearings have been held on this broad proposal to abolish joint and several liability for noneconomic damages in all civil cases. There has been no discussion of the range of State laws that would be overridden by this amendment and the effect that overriding them would have. This amendment is unfair and unbalanced, and I cannot support it.

PUNITIVE DAMAGE CAPS FOR SMALL BUSINESSES

Mr. BRADLEY. Mr. President, I rise today to express my support for the amendment offered by my colleague from Ohio, Senator DEWINE, and accepted by the Senate yesterday. The amendment provides for a $250,000 cap on punitive damages for individuals whose net worth does not exceed $500,000 and corporations, partnerships, associations, and units of local governments with fewer than 25 employees.

Mr. President, small businesses are the engine that drives the American economy and provide for at least half of this country's new employment opportunities. As such, Mr. President, as we debate the issue of imposing a punitive damages cap, we need to ensure that small businesses are not punished disproportionately when they take actions which call for the imposition of such damages.

Mr. President, punitive damages are designed to punish the offender and protect the public by deterring conduct that is harmful. I am, therefore, a strong proponent of the right of courts to police egregious conduct through the award of punitive damages. Thus, while a cap on punitive damage awards should be sufficient to punish and deter future action, it should also reflect the fact that a cap that may be sufficient to punish a large corporation may in fact push a small business into the abyss of bankruptcy.

Mr. President, I have spoken to small business owners in New Jersey on this issue. What I have heard over and over again is that if they commit offenses that merit an award of punitive damages, they should be punished; however, the punishment and deterrent effect should reflect the economic situation of the small business offender. Mr. President, a $250,000 punitive damage award against a small business with assets of $400,000 may drive the owner out of business, while a $5 million punitive award against a large corporation with assets in excess of $500 million will have less of a deterrent effect. I cannot support such a disproportionate impact on small businesses struggling to meet their bottom line.

Therefore, Mr. President, I am pleased to support the amendment offered by my colleague from Ohio which serves to balance our national interest in punishing and deterring harmful conduct and protecting the viability of small businesses.

Mr. DODD. Mr. President, I have been working on product liability reform for more than a decade. During that time, a wide range of my constituents—consumers, manufacturers, small businesses, and workers—have told me about the serious problems with the present system.

Injured people are upset about both the length of time it takes to receive fair compensation and the high cost of legal fees. Manufacturers are reluctant to introduce new products because of the inconsistent product liability laws in the 50 States. Small businesses are hurt by the costs of defending themselves against unjustified lawsuits. Workers fear that the costs in the present system will drag the economy down. Consumers question whether they are getting high quality products at a fair price.

We need reform that will improve the system for everyone. To do that, we must strike a balance between many competing interests. We must not adopt reform that tips the balance too far in any direction. In the past, I have opposed measures that unfairly limited the rights of consumers, and I will continue to do so.

Because 70 percent of all products move in interstate commerce, this is an appropriate area for Federal standards. A national, more uniform system would lower costs and speed the resolution of disputes. At the same time, we need to be careful about making other changes in the legal system that have not been as carefully thought out.

The original bill, crafted by Senators ROCKEFELLER and GORTON, offered the kind of carefully focused, balanced reform that would improve the system for everyone. I am a cosponsor of that bill. I am concerned, however, about a number of changes that were made to the legislation during the past week.

For example, the bill now contains a separate title on medical malpractice reform. I agree that there are significant problems with medical malpractice litigation and that Congress should enact carefully considered reforms. The proposal that was added to the product liability bill, however, is flawed.

It contains, for example, a provision that would make it harder to bring lawsuits against obstetricians who are seeing the patient for the first time. This provision might not have much of an effect on wealthier patients who would have a primary doctor supervising the obstetric services. But what about those poor women who only see the doctor during the actual delivery of the baby? If they were injured, they would have a difficult time receiving compensation.

The Gorton-Rockefeller bill was expanded in other ways. For example, there is now a cap on punitive damages in all civil cases—not just product liability cases. There have been a number of studies and commentaries about the problems with punitive damages in product liability cases. Those analyses suggest that some reform is needed for those cases. However, it is not clear that we need to reform punitive damage awards in all civil cases. In my view, we ought to engage in more extensive debate before taking such drastic steps.

Additionally, I have concerns about putting arbitrary limits on damages. Because caps limit flexibility, they can lead to unjust results in some cases. I have filed an amendment that would address this problem. Under my amendment, the jury would determine whether punitive damages are appropriate, but the judge would set the amount. Hopefully, we will resume debate on the bill and consider this amendment.

Because of these and other concerns, I will vote against cloture. There is still much work that needs to be done on this bill, and this is not the time to cut off debate. I still support product liability reform and will work with my colleagues to enact careful, balanced reforms. But I will not support efforts to ram through other changes in the legal system that go far beyond the balanced product liability bill I cosponsored.

We have a real chance to actually pass meaningful and fair product liability reform this year, and I will not support anything that endangers those chances. In my view, there is a bipartisan majority of Senators that would support that approach, and I look forward to working with them to pass a good bill.

VOTE ON MOTION TO TABLE AMENDMENT NO. 600

The PRESIDING OFFICER. Under the previous order, the question now occurs on amendment No. 600.

Mr. GORTON. Has a rollcall been ordered?

The PRESIDING OFFICER. It has not.

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

Mr. ROCKEFELLER. If the Senator will yield for a moment, I move to table the Abraham 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.

The PRESIDING OFFICER. Under the order, the question now occurs on the motion of the Senator from West Virginia [Mr. ROCKEFELLER] to table amendment No. 600, offered by the Senator from Michigan [Mr. ABRAHAM].

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

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "aye."

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

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—51

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

NAYS—48

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

NOT VOTING—1

Pell

So the motion to lay on the table the amendment (No. 600) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 681

The PRESIDING OFFICER. The question now occurs on amendment No. 681, offered by the Senator from Arizona.

Mr. GORTON. 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.

The clerk will call the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

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

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

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—60

Abraham	Gramm	McConnell
Ashcroft	Grams	Murkowski
Baucus	Grassley	Nickles
Bennett	Gregg	Nunn
Bond	Harkin	Packwood
Brown	Hatch	Pressler
Bumpers	Hatfield	Reid
Burns	Heflin	Roth
Campbell	Helms	Santorum
Chafee	Hollings	Shelby
Coats	Hutchison	Simpson
Cochran	Inhofe	Smith
Coverdell	Jeffords	Snowe
Craig	Kassebaum	Specter
D'Amato	Kempthorne	Stevens
DeWine	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Thurmond
Faircloth	Mack	Warner
Frist	McCain	Wellstone

NAYS—39

Akaka	Exon	Lautenberg
Biden	Feingold	Leahy
Bingaman	Feinstein	Levin
Boxer	Ford	Lieberman
Bradley	Glenn	Mikulski
Breaux	Gorton	Moseley-Braun
Bryan	Graham	Moynihan
Byrd	Inouye	Murray
Cohen	Johnston	Pryor
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Kohl	Simon

NOT VOTING—1

Pell

So the amendment (No. 681) 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.

VOTE ON MOTION TO TABLE AMENDMENT NO. 682

The PRESIDING OFFICER. Under the order the question occurs on amendment 682 offered by the Senator from South Carolina [Mr. HOLLINGS].

Mr. GORTON. Mr. President, I move to table the Hollings amendment, and 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 motion of the Senator from Washington to lay on the table the amendment of the Senator from South Carolina. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

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

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

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—56

Abraham	Exon	McCain
Ashcroft	Faircloth	McConnell
Baucus	Frist	Moseley-Braun
Bennett	Gorton	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Pressler
Burns	Grassley	Pryor
Campbell	Gregg	Robb
Chafee	Heflin	Rockefeller
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Smith
Craig	Jeffords	Snowe
D'Amato	Kassebaum	Specter
DeWine	Kempthorne	Stevens
Dodd	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Warner
Dorgan	Mack	

NAYS—43

Akaka	Glenn	Lieberman
Biden	Graham	Mikulski
Bingaman	Harkin	Moynihan
Boxer	Hatch	Murray
Bradley	Hatfield	Nunn
Breaux	Hollings	Packwood
Bryan	Inouye	Reid
Bumpers	Johnston	Sarbanes
Byrd	Kennedy	Shelby
Cohen	Kerrey	Simon
Conrad	Kerry	Simpson
Daschle	Kohl	Thurmond
Feingold	Lautenberg	Wellstone
Feinstein	Leahy	
Ford	Levin	

NOT VOTING—1

Pell

So, the motion to lay on the table was agreed to.

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

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

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. KYL). Under the previous order, the clerk will report the motion to invoke cloture.

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.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the call of the roll has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Gorton amendment numbered 596 to H.R. 956, the

product liability bill, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "aye."

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

The yeas and nays resulted—yeas 46, nays 53, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—46

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

NAYS—53

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

NOT VOTING—1

Pell

The PRESIDING OFFICER. On this vote, the yeas are 46, the nays are 53. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, assuming that this is free time, I ask unanimous consent that the Senator from California, Senator FEINSTEIN, be allowed to speak for 10 minutes.

The PRESIDING OFFICER. Time is controlled and equally divided. Without objection, the Senator from California is recognized.

Mrs. FEINSTEIN. I thank the Chair and I thank the Senator from West Virginia.

Mr. President, I have listened carefully over the past weeks of this debate—pro and con—on product liability. I am not an attorney, so I have tried hard to work through what is fair and what is not. While I would like to have an opportunity to vote for cloture on a more narrowly crafted bill, I cannot vote for this bill with the Dole amendment included. To do so, I believe, would extend the impact of the bill far beyond the limited field of product liability, and impose major limitations to redress of grievances across the board in all civil actions, without the opportunity of Committee hearings in the Senate and consideration of how the bill would impact other specific areas of the law.

Anyone who has read "The Rainmaker," the newest best seller, can see what impact the Dole amendment would have, for example, in insurance cases. Insurance companies would be able to do exactly what was done in that book, act in bad faith. And I simply cannot support this.

I believe that Senators GORTON and ROCKEFELLER have worked hard to craft a bill with reasonable reforms that could pass this body. I was particularly pleased with the compromise reached with the Snowe amendment to limit punitive damages to two times compensatory, which is now part of this bill. This replaces the original fixed cap of $250,000, or three times economic damages, whichever is greater. I believe this would be a fair model which takes into consideration both women and children whose earnings may be limited or nonexistent.

I find myself in strong support of other major provisions of this bill, as well. Specifically, I support the imposition of a 2-year statute of limitations from the time the injury and its cause are discovered for a plaintiff to bring a lawsuit. This provision is actually more permissive than that in many States, and California. This provision is actually victim and plaintiff friendly.

Two, the imposition of a 20-year statute of repose, an outer time limit on litigation involving workplace durable and capital goods. This is a fair standard of repose.

The bill would eliminate product seller's liability—including that against wholesalers, distributors, and retailers—for a manufacturer's errors. Sellers would remain liable in cases of their own negligence. For example, if a seller removed the manufacturer's label from a toy that said it is not appropriate for children under 6 years of age, and a child was subsequently injured, the seller would be liable.

The bill would preserve a plaintiff's power to sue one defendant, theoretically the deep pocket, for the full amount of economic damages, but eliminate such joint and several liability for noneconomic damages, such as pain and suffering.

It would allow either party to offer to participate in alternative dispute resolution—something that I very much thought and hoped would be part of this bill, and which I believe is an important part, especially for the plaintiffs who have small claims.

The bill would bar recovery of a plaintiff who is more than 50 percent responsible for causing their accident due to intoxication from alcohol or any drug. This puts a fair measure of the degree of culpability on a plaintiff in an action.

It would reduce the amount of the judgment against the defendant if the product user is found to have misused or altered the product. I believe this is a just and fair provision. It would eliminate liability of raw material suppliers for medical devices, such as the supplier of teflon/dacron, products often used to coat a medical device.

Finally, the bill would deny an employer at fault in causing a workplace injury the right of reimbursement for workers compensation benefits from an employee who wins in a suit against a manufacturer.

The tort liability system has been a particular source of concern to many, and that includes everyone: consumers, professional service providers, manufacturers, and public agencies, all of whom, in recent years, have faced increasing liability insurance costs. Over the last 40 years, general liability insurance costs have increased at over four times the rate of growth of the national economy. American manufacturers and products sellers generally pay product liability insurance rates that are 20 to 50 times higher than those of their foreign competitors. In a global marketplace, that becomes a real barrier to competition.

Many believe that the tort liability system of delivering compensation is seriously flawed, requiring high transaction costs to deliver compensation that some see as inadequate and others as too generous, but which most agree is uncertain and unpredictable.

Putting aside the size of the judgment for a moment, the transaction costs associated with the current product liability system—including plaintiff's attorney's fees, defense legal fees, court proceedings and other public expenditures, the time of the litigants—are enormous. The Rand Institute found that overall transaction costs of the tort system actually exceed compensation to plaintiffs.

Critics of product liability reform, on the other hand, argue that however well or poorly the system performs its compensation function, it must be preserved and indeed strengthened because of its importance as a means of deterring unlawful, careless, negligent conduct in the manufacturing of a product.

I believe the basic bill provides a fair and reasonable balance. Many of its provisions are either consistent with or based on California law.

The two key features of the bill that have raised the most concern are the

cap on punitive damages and the joint and several liability provisions.

I was pleased to work with and support Senator SNOWE's amendment on a modified punitive damages formula that is responsive to the concern raised about the impact on women and children of the punitive damages cap in the original bill.

Instead of linking the punitive damages cap to a formula that is lopsided in favor of those with high amounts of lost wages, the modified formula links punitive damages to what I consider a fairer measure—the full compensation received by the plaintiff.

This formula is substantially that recommended by both the American College of Trial Lawyers and the American Law Institute, and both bodies have given a great deal of study and attention to the issue of punitive damages.

Although I would support a bill without a punitive damages cap, I have concluded that some reform of this area is needed.

The American College of Trial Lawyers, for example, commented that punitive damages awards "* * * often bear no relation to deterrence and merely reflect a jury's dissatisfaction with a defendant and a desire to punish, often without regard to the true harm threatened by a defendant's conduct." They further note that "* * * punitive damages should be more difficult to obtain and that the amounts of such awards should be subject to more control."

The Supreme Court, as well, has expressed concern about punitive damages that "run wild," and have clarified that it is the job of judges to review awards for their reasonableness.

In a recent law review article, it was noted that in recent years, the scope of punitive damages law has broadened considerably as the courts have applied them in new fields of law—such as product liability, mass tort litigation where punitive damages can be awarded repeatedly, and contract law—all areas of the law where punitive damages did not traditionally apply.

As a result, the number of awards has increased significantly. In my own State of California, between January 1, 1990, and December 31, 1994, there were 86 punitive damage jury verdicts in State courts that were equal to or greater than $1 million, out of several hundred cases, resulting totally in judgments of $1.7 billion. California has one of the largest number of punitive damages awards and size of awards in the Nation.

The Gorton substitute amendment, as modified by the Snowe amendment, I believe is the right approach. It retains punitive damages, which are a powerful tool for deterring conduct which society finds offensive and flagrant and, at the same time, ensures that more reasonable awards will be set.

Another area that has been of great concern are the provisions on joint and several liability. This provision in the bill is actually based on reforms enacted in California in 1986 by ballot initiative.

It neither appears reasonable nor fair to hold a defendant liable for more than their share of the fault just because they are the deep pocket or the only available party to be sued. The public policy has been that in selecting among parties to bear the burden, pick the deep pocket. I do not agree with that.

Again, I think the approach of the bill, as in California, is the fairest compromise, allowing for full economic compensation, but an apportioning of noneconomic losses among responsible parties in proportion to their level of fault.

I want to speak for a minute on biomaterials, which impacts the growing medical technology sector in my State. In April of last year, the New York Times reported that big chemical companies and other manufacturers of raw materials, used to make heart valves, artificial blood vessels, and other implants, began warning medical equipment companies that they intended to cut off deliveries because of fears of being joined in lawsuits.

In essence, many biomaterials suppliers simply will not provide their product to medical device manufacturers because such transactions involve low returns and a high risk of substantial losses.

Ms. Peggy Phillips, an attorney with a life-sustaining medical device, testified before a Commerce subcommittee and told me personally, of her own story. She suffers from sudden cardiac death syndrome—a disease where the patient's heart will unexpectedly stop beating for no apparent reason. As a result, Ms. Phillips had a life-saving device implanted in her body called an implantable defribillator. Essentially, it functions to shock her heart back to life and to maintain a constant heart beat.

This device and others like it, however, are in jeopardy, because, as Ms. Phillips noted, it does not make sense for biomaterial suppliers to continue providing those materials for device manufacturers.

She related a story of one supplier who spent $8 million annually defending itself in cases involving an implantable device even though that supplier had no role in the design, manufacture or sale of the device.

She noted that sales by all suppliers to the device "totaled $418,000 while sales of this same raw material to all other markets totaled $282 million."

The provisions of this bill, both preserve access to essential supplies and shorten the liability chain so that those who are truly responsible for the design, manufacture or sale of a product will be the party hauled into court to be held accountable.

The current State-by-State system of product liability is ever changing and filled with conflicting rules it presents, today, I believe, an unfair barrier to competition, and creates an unpredictability which is neither fair to business nor consumers because it translates into less development of new products and higher product costs for the consumer.

It is my hope that I will have an opportunity to vote on a narrow bill which includes the provisions of this bill on which I have stated my support, but which does not include the Dole amendment crippling punitive damages in all civil actions.

The PRESIDING OFFICER. The additional 2 minutes has expired.

Mrs. FEINSTEIN. Mr. President, I thank the Chair. I thank the leader for his courtesy, and I want to thank the two authors of the bill. I know they have labored long and hard.

Mr. DOLE. Mr. President, I will take 2 or 3 minutes, and I think the Senator from Utah wishes to speak, and maybe others. There will be one more cloture vote on the substitute amendment.

Mr. HOLLINGS. Will the Senator yield? We will have our time? I know the majority leader is talking on leader's time.

Mr. DOLE. We each have 11 minutes.

The PRESIDING OFFICER. The minority time of 11 minutes has expired; the majority leader has time remaining.

Mr. HOLLINGS. Are we talking about those for and against the bill? Are we deemed the minority side? I think by the recent vote we would be the majority side.

I'll be glad to yield to the majority leader. I just wanted to have time.

The PRESIDING OFFICER. The Senator from West Virginia yielded time to the Senator from California, and the time of the minority has expired.

Mr. DOLE. We will work it out. We will just have to delay the vote. We have 10 minutes on this side.

Mr. HOLLINGS. Ten minutes.

Mr. DOLE. Maybe it will not take quite 10 minutes. We had somebody that wanted to leave at 2 o'clock. We will work it out.

Mr. HOLLINGS. We will work it out. We have regular order at 2 o'clock—another vote.

Mr. DOLE. We will delay it a few minutes so that the Senator will have time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. I wanted to remind people before the next cloture vote that 83 percent of the American people want to reform our legal system. They want to eliminate abusive, large damage awards that benefit only lawyers and not the public, and they want commonsense, not dollars and cents, legal reform.

Who would have thought that 2 weeks ago a majority of the Senate would vote to extend punitive damages to all civil cases? It would have been hard to believe 2 weeks ago that a majority of the Senate would vote to add medical malpractice to the bill. It would have been hard to believe 2 weeks ago when we started on this bill that a majority in the Senate had proved by its vote that it wants to improve the legal system so that it benefits a majority of the Americans and not a majority of the trial lawyers.

Do not forget, with the votes we have been able to pretty much meet what the House did in a bipartisan way in the Contract With America. The vote in the House was 265 to 161. We had a lot of Democrats and a lot of Republicans come together and respond to the voices of the American people.

For the first time in 10 years, we have broken the stranglehold of the tort lawyers. We have heard the voices of the American people and passed amendments that protect entities as varied as small businesses, Girl Scouts, churches, Little Leagues, firefighters, and policemen.

For all this endorsement of change, the forces of status quo remain as strong as ever. They continue to object and delay, and our constituents pay more in the cost of this gridlock. The cost is steep.

Let me remind the Senate and the American people of the outrageous cost of our legal system: It adds about $8 to $11.50 to a dose of DPT childhood vaccine; it adds $20 to the cost of a $100 stepladder; it adds $100 to the price of a $200 high school football helmet; and $500 to the price of a new car.

Experts have estimated that without reform of our legal system, it costs every American $1,200, or $4,800 for a family of four. That is a cost of $300 billion per year, a tax on the American people. Any wonder why the American people want change and want Members to make as many changes as we can?

I do not have any anticipation that there will be a sudden switch and we will get cloture on the second vote. I think there were 46 voted for cloture—44 Republicans, 2 Democrats—and the balance who voted were opposed to cloture. There will be another cloture vote in the next 15 minutes. There is an opportunity for those who may have not fully understood the import or the impact of the vote "yes" on this cloture vote.

It seems to me if we are going to reform our legal system we have a pretty good package here. Not everything people wanted is in it, but it is a pretty strong package. We owe it to the American people, in my view, to invoke cloture on this bill and then proceed to pass the substitute as amended.

If that fails, there will be a substitute offered by the Senator from Washington and the Senator from West Virginia. But I think we have one last opportunity here to say that we are not doing business as usual. I hope that my colleagues will grab that opportunity. I yield the remainder of my time to the Senator from Utah.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, what is the parliamentary situation now? How much time is on either side?

The PRESIDING OFFICER. The majority side has 6 minutes 52 seconds; the minority time is expired. The time for voting was earlier extended to 2 minutes after 2 o'clock.

Mr. HOLLINGS. Is the Senator from South Carolina the majority or the minority? We have not clarified that. The time was supposed to be equally divided, and we have not said a word on this side.

Mr. DOLE. Five minutes?

Mr. HOLLINGS. I don't know if I need 5 minutes: I am being persuaded by my colleagues they have heard enough from me.

Mr. DOLE. I am happy to yield 5 minutes of our time. That would leave 2 minutes to the Senator from Utah.

Mr. HOLLINGS. I will take 2 minutes.

Mr. President, right to the point. We assume that the contention of the sponsors of this bill is that we need tort reform. This contention, however, has been totally contradicted by the data that have been collected on the product liability system. I will go right to the heart of the matter. Of all civil claims filed in the United States of America, 9 percent represent tort claims; and of all the tort claims filed, 4 percent of that 9 percent represent product liability, the subject matter at hand.

If they really want to talk reform, they would obviously go to automobile accidents and many other tort cases, which represent the overwhelming majority of tort cases filed, not product liability. That refutes that particular contention.

They contend, "Well, wait a minute, there is a litigation explosion." That was refuted at all the hearings, and studies by the Rand Corp., the General Accounting Office, and Prof. Marc Galanter of the University of Wisconsin. What these studies have shown is that the fact of the matter is that product liability claims now are in a diminishing scale. That is why they say at the State's level, "Look, we do not have a problem. We oppose this measure." Both the Association of State Legislatures, and the Association of State Supreme Court Justices are on record as opposing this bill.

The American Bar Association, the Association of State Supreme Court Justices, the State attorneys general, everybody connected with the law on this particular score comes, testifies, and opposes this measure for the simple reason, No. 1, they do not really find a crisis, or cause for Federal action.

And in the context of eliminating duplicity and confusion, the proponents of this bill will actually add to the confusion, add to the complexity, by enunciating rules of guidelines at the Federal level, to be interpreted and administered by the 50 States in accordance with their own law. However, their refusal to establish a Federal cause of action is evidence that they do not believe in their own bill.

This bill, in fact, is a manufacturers bill—but they exempt themselves. I see the Chair now is limiting my time. It just goes against any kind of sound procedure.

If everybody is in step, Senator, with the contract, this is exactly opposed to the contract. The contract says that the best government is that closest to the people.

They keep quoting Jefferson around here, and instead of block grants like they have for crime and block grants for welfare back to the States, block grants for housing back to the States, here they want to take the authority, the 200-some-year authority from the States and relegate it to the Federal bureaucrats.

I am finally getting in step with the contract. I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to urge my colleagues to vote in support of cloture on the Gorton substitute for the product liability bill as amended.

The American people support these commonsense changes to this bill. A majority of the Senate has supported these commonsense changes to the bill. But defenders of the status quo are now filibustering the bill and filibustering the changes Americans want.

Who benefits if they win? Some—just some—of our Nation's trial lawyers benefit: those who want to keep the status quo.

Who benefits the most in the status quo? Who has the largest stake in maintaining this out-of-control civil justice system and its runaway punitive damages? I think most of my colleagues know who. Some of our Nation's trial lawyers. And I believe most Americans understand that, as well.

The opponents of change may want to shroud this issue under a smokescreen of high-blown rhetoric, but when the smoke clears we will see some of the Nation's trial lawyers laughing all the way to the bank. Who else could defend a system where an undisclosed $601 paint refinishing of an automobile results in a $2 million punitive damage award? Who else could defend a system where an insurance agent's misrepresentation about a $25,000 policy could result in a jury award of $25 million in punitive damages?

We could go on and on. Now, the fact of the matter is, I am not talking about all trial lawyers, just some who literally have milked this system dry.

Everybody knows we have to make these changes. There are excesses in the system, and these excesses are ones that only trial lawyers, some trial lawyers, could love. Runaway punitive damages is one of those excesses.

I urge our colleagues to vote for cloture on this next vote and help us to bring about the change that all America wants and only a few trial lawyers want to avoid.

Mr. President, I rise today to urge my colleagues to support cloture on the Gorton substitute to the product liability bill, as amended. The American people support commonsense change in our legal system. But the stubborn defenders of the status quo are now filibustering the change Americans want. Who benefits? Some of our Nation's trial lawyers, that's who.

As I have mentioned earlier, this bill represents the culmination of a longstanding, bipartisan effort to correct some of the more egregious faults of our product liability and civil justice systems. The defects in our product liability system have been long recognized.

We also passed a provision to apply punitive damage reform to all civil cases whose subject matter affects commerce. As I noted during that debate, punitive damage awards have grown out of control in this country. They have been out of control in all civil litigation—not just product liability cases. Even opponents of this legislation have pointed out time and again that excessive punitive damage awards in this country are most heavily evident in nonproduct liability cases. I agree. That is why I cosponsored the Dole punitive damages amendment, and why I was so pleased that a majority of my colleagues supported it.

That amendment improves the underlying bill by addressing more completely the crippling litigation costs that have been imposed not only on our product manufacturers but on cities and counties, volunteer organizations, service providers, small businesses, and others.

We have also added medical malpractice reform to the Gorton substitute.

Mr. President, I have listened as the champions of the status quo have mislabeled this bill as a manufacturer's bill. It is a pro-consumer bill. I have listened as these opponents of change in our civil justice system talk about the bill as narrowly drawn, covering only some participants in our national economy, even as they, ironically, resist efforts to have some provisions of the bill extended to cover all civil actions. These comments are, with all due respect, diversionary in their effect.

Who benefits the most from the status quo? Who has the largest stake in maintaining, in place, this out of control civil justice system and a runaway punitive damages system? I think most of my colleagues know who—some of our Nation's trial lawyers. I believe most Americans understand that, as well.

The opponents of change may wish to shroud this issue under a smokescreen of high blown rhetoric. But when the smoke clears, there are some of the Nation's trial lawyers, laughing all the way to the bank. Who else could defend a system where an undisclosed $601 paint refinishing of an automobile results in a $2 million punitive damage verdict? Who else could defend a system where an insurance agent's misrepresentation about a $25,000 policy could result in a jury award of $25 million in punitive damages? Who else could defend a $38 million punitive damage verdict over the handling of a car loan? Who else could defend a system where liability concerns impede volunteer organizations and are so costly to them?

Now, I am not talking about all trial lawyers, and I understand the vital role lawyers play in vindicating individual rights. But lets face it: there are excesses in the system only some trial lawyers could love.

Runaway punitive damages are one of those excesses. The pending measure fixes this problem, and others. I urge a vote for cloture and allow us to give the American people the commonsense legal reform they want.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 2:02 having arrived, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Gorton amendment No. 596 to H.R. 956, the product liability bill, shall be brought to a close? The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "aye."

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

The yeas and nays resulted—yeas 47, nays 52, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—47

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

NAYS—52

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

NOT VOTING—1

Pell

The PRESIDING OFFICER. On this vote, the yeas are 47, the nays are 52. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

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

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

Mr. BRADLEY. I thank the Chair.

(The remarks of Mr. BRADLEY pertaining to the introduction of S. 759 are located in today's RECORD under

"Statements on Introduced Bills and Joint Resolutions.")

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. I ask unanimous consent that I be allowed to continue for up to 15 minutes as in morning business.

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

MEDICARE'S IMPENDING BANKRUPTCY

Mr. BENNETT. Madam President, last evening, as I sat in the chair, the distinguished minority leader came on the floor and made a statement about, among other things, Medicare. There were many of the things he said on that occasion with which I disagree and so I take this opportunity, while my memory is still fresh on the minority leader's comments, to register my disagreement.

The reason I am doing it this quickly, and I hope this completely, is because I believe that the issue of Medicare's impending bankruptcy is so important that we should not allow statements that are incorrect to stay on the RECORD uncorrected. We should make sure this debate is as careful and as correct as it can possibly be. The stakes are much too high for this debate to take place in an atmosphere that some might consider demagogic.

I will take several of the minority leader's statements now and respond to them specifically. The first one: He said—and I am quoting from this morning's CONGRESSIONAL RECORD, page 6128:

> Republicans have discovered that the Medicare Program faces challenges in the years ahead. Democrats told them and the Nation that 2 years ago when we shored up the Medicare Program and cut the deficit, all without Republican votes.

Madam President, I apologize for not having this particular chart made up in a chart big enough to show the world. Perhaps the television can pick it up for those that are watching. But I am sure those in the Chamber can at least see the direction of the curve, which is the hospital insurance trust fund balance, in billions, starting in 1994; it goes up slightly in 1995 and then begins a precipitous plunge to zero in the year 2002.

The reason I hold this chart up is because the minority leader has said, "Democrats told the Nation that 2 years ago." This chart, Madam President, became available on April 5, 1995, not necessarily 2 years ago.

I sat in the Chamber in the other body when the President of the United States addressed the House of Representatives in September 1993, roughly 2 years ago, and gave a masterful discourse on health care. He did not mention anything relating to the facts contained in this chart.

If, in fact, Democrats told Members this 2 years ago, the President of the United States neglected to mention it when he made his statement to the joint session of Congress.

I will not claim to have participated in all portions of the health care debate last year. I do not think any Member can make that claim. I watched the health care debate very closely. I cannot recall a single instance where a single Democratic spokesman told Members in last year's debate that the Medicare trust fund was in any kind of trouble.

The minority leader talked about the budget. I participated in the budget debate when the new administration came in. The adoption of the budget of which the minority leader is so proud, and I cannot recall—and I would like to have him point out to me if I am wrong—a single instance during that budget debate where the Democrats told Members that this trust fund was headed for disaster, indeed, extinct, in the year 2002.

I think the minority leader is incorrect when he says the Republicans are just discovering something that the world has known and that the Democrats openly told Members about 2 years ago.

Second, he says:

> House Republicans are considering reductions in Medicare growth on the order of $300 billion. Senate Republicans have said they will need to reduce normal Medicare growth by $200 to $250 billion.

Then he goes on to say this is normal growth; the Republicans are cutting this growth in a way that is irresponsible.

What he does not tell Members is that during the health care debate last Congress, the President himself projected that we needed to reduce Medicare by $118 billion. I am not going to quibble with him—yes, the $200 billion figure that is talked about in the Senate now is obviously much higher than the $118 billion figure that the President talked about.

The point is that the President, in last year's debate, and Democrats on this floor in last year's debate said, "We must reduce Medicare," and the figure the President came up with was $118 billion.

I do not think it is appropriate to say the Republicans have suddenly discovered the idea of reducing Medicare in the hundreds of billions of dollars, and is that not terrible, when the President himself was saying we have to reduce Medicare from the projected rates by in excess of $100 billion. That was OK, then. Now, Republicans are being bashed.

The one I feel the most strongly about, Madam President, is this statement where the minority leader said:

> Medicare Program costs are increasing because all health insurance costs are increasing. In fact, on a per capita basis, Medicare and Medicaid costs are increasing at the same rate as privately insured costs.

On this one, Madam President, I did go to the chart makers and I have produced a chart. I will put it here and share it with the Members of the Senate and ask unanimous consent that the figures contained in this table be printed in the RECORD following my Statement.

(See exhibit No. 1.)

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

Mr. BENNETT. Here are medical expenditures. The dark figure—no metaphor intended—the dark figure is for public expenditures for health care; the light figure is for private expenditures.

The expenditures are calculated in terms of percentage growth. That is, if we look at 1985, in that year, public expenditures for health care went up at a rate of 8.8 percent per year, while private expenditures went up 10.3 percent. We can see in these years there is a disparity.

Some years public ones go up faster than private; other years private expenditures go up substantially faster than public expenditures. We can see that, in general terms, it is around 8 or 9 percent in public expenditures and slightly more than that in private expenditures.

Then in 1989, something happened. In 1989, the rate of increase for public expenditures went to its highest level—11.9 percent; private levels going up at 10.3 percent. Then, in 1990, public expenditures went up 13.2 percent; for the second year in a row, public expenditures went up faster than private, a trend that has continued to this day unabated.

In 1991, public expenditures are still up in the double digits—12.6 percent, but market forces are beginning to assert themselves in the private marketplace, and the private expenditures only increased 5.6 percent. It did not stay down that low the next year. They came up to 6.9; but public expenditures stayed in double digits at 10.8 percent.

Now they have been getting better. In 1993, public expenditures 8.5, but private is 7.2. In 1994, public expenditures come down to 7.8; but private drops to 5.3 percent.

For the minority leader to say that the reason we cannot do something about the expanding growth of Medicare is because Medicare expenditures are going up at the same rate as private expenditures, is to ignore the facts of the case.

Private expenditures are coming down in terms of the percentage growth at a faster rate than public expenditures are coming down. Indeed, Madam President, if we were to take the minority leader's statement at face value, where he says:

> Medicare Program costs are increasing because all health care insurance costs are increasing on a per capita basis. Medicare and

Medicare costs are increasing at the same rate as privately insured costs.

If that statement were true, that would mean that Medicare and Medicaid costs would be increasing at 5.3 percent per year, which figure, Madam President, is within the band the Budget Committee is considering for increases for Medicare and Medicaid.

I have sat in on the budget briefing and I have heard the budgeteers say, "If only we could get the rate of increase down to 5 percent, we could solve all of our problems." The rate of increase is down to 5 percent in private expenditures.

The minority leader thinks the two are the same. Perhaps he has them confused and thinks that the private people have not done a good enough job and the private expenditures are up in this kind of level for public expenditures. In fact, they are not. They have, ever since 1989, come down at a faster rate than the public expenditures come down and they are leading the way.

This is the point we need to keep in mind, then, Madam President, with respect to Medicare and the reforms that are necessary. We cannot demagog this issue. We must stick with the facts. Our goal is to make the system that takes care of our elderly as stable, as secure, and as certain for the future as the system that takes care of the rest of the population.

If we can do it as responsible public servants at the same rate of increase that exists in the rest of the population, we can solve all of our budgetary problems and the disastrous circumstance indicated in this table will go away.

Madam President, I have nothing but respect for our distinguished minority leader. I consider him a friend and one of the more reasonable and certainly most thoughtful Members of this body. I feel that the information that he shared with the Senate last night is inaccurate, and it becomes Members in this debate to make sure that the record is set straight as quickly as possible, because the stakes in this debate are so high.

I thank the Chair. I yield the floor.

EXHIBIT No. 1.

CBO estimates for total medical and health care spending in the public and private sector from 1985 until 1994. The figures include spending for administrative costs, construction, and research and development as well as personal health care costs associated with doctors and hospitals. The figures shown represent a percentage increase over the previous year's spending level.

MEDICAL EXPENDITURES

Year	Public (percent)	Private (percent)
1985	8.8	10.3
1986	8.9	6.1
1987	8.9	8.5
1988	9.0	12.6
1989	11.9	10.3
1990	13.2	10.6

MEDICAL EXPENDITURES—Continued

Year	Public (percent)	Private (percent)
1991	12.6	5.6
1992	10.8	6.9
1993	8.5	7.2
1994	7.8	5.3

Source: CRS.

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

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

The Senator from Utah is recognized.

Mr. HATCH. I thank the Chair.

(The remarks of Mr. HATCH and Mr. PRYOR, pertaining to the introduction of S. 758 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. PRYOR. Mr. President, I see no other Senator seeking recognition at this time. Therefore, I yield the floor.

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

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

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

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 53, expressing the sense of Congress regarding a private visit by the President of the Republic of China on Taiwan to the United States.

Mr. PRYOR. Mr. President, I am sorry I have to do this, but in behalf of another Senator who could not be here at this time, I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. I thank the Chair.

THE SENATE CHAMBER DESKS—A BRIEF HISTORY

Mr. PRYOR. Mr. President, recently I announced that I was not going to be seeking another term in the Senate. It has been a wonderful opportunity these last 16½ years to serve in this great body, to be serving with all of my great colleagues and friends from all the 50 States, and all the wonderful staff people that make this place run. I just want to thank all of them so much for their many kindnesses shown to me.

Mr. President, I was cleaning out my desk a while ago and just looking through something I have had in my desk for some time that was prepared by some of the individuals, I think, in the Historian's office. That is not the proper name for those who prepared this. But I thought while there were interested parties involved, I might read a few pages of some of the history of the desks in this Chamber. This is a brief history.

When British troops burned the U.S. Capitol in 1814 during the War of 1812, they severely damaged the Senate Chamber and destroyed the original furnishings. The rebuilt Chamber was completed in 1819 and the Senate ordered 48 new desks at a cost of $34 each from Thomas Constantine. A New York cabinetmaker, he also constructed desks for the House of Representatives. Many of these early desks remain in use in the Senate Chamber today. As new states have entered the Union over the years, additional desks of identical design have been built and placed in use.

Throughout most of the 19th century a senator's only office was his desk on the Senate floor.

We did not have, I might say, the Senate office buildings. This was our office, the desk that was on the Senate floor.

but gradually separate rooms were assigned. The earliest offices were Committee rooms occupied by their chairmen; additional space later became available under the Olmsted Terraces on the West Front of the Capitol. Finally, with the completion of the first Senate office building [the Russell Building] in 1909, all senators were able to occupy suitable offices on Capitol Hill.

Over the years, modifications have been made to the Chamber desks to provide more room for books and papers. Beginning in the 1830s, three- to four-inch high mahogany writing boxes were added to each desk. The writing boxes were not installed all at one time, but periodically over the next 40 years, usually at the request of a desk's occupant. Senate vouchers record payments to carpenter R. B. Griffin for altering nine mahogany desks in 1860, shortly after the Senate moved to its present Chamber.

Not every senator preferred the modification, but today only one desk—"the Webster—lacks a writing box. Senator Daniel Webster reputedly refused to have his desk added to on the grounds that if his predecessor had managed without the extra space, so could he. No succeeding occupant of Webster's desk has seen fit to abandon that opinion. In order to bring the height of the Webster desk into visual line with others in the Chamber, a raised base has been added. Although he was born in New Hampshire, Webster represented Massachusetts in the Senate, and the desk has continued to be associated with Webster's birth state. New Hampshire Senators Styles Bridges and Norris Cotton, for example, occupied the desk for long periods. In 1974, just before Cotton retired from the Senate, he secured the adoption of Senate Resolution 467 (93rd Cong., 2nd sess.), specifying that the Webster desk would henceforth always be assigned to the senior senator from New Hampshire.

Other early Senate desks bear design characteristics that allow their differentiation.

The oldest desks incorporate wooden inlays of circular and rectangular banding at the sides, crotch veneer mahogany across the fronts, and narrow reeding on the feet. These features were incorporated in desks newly-made throughout the third quarter of the last century and may today be found in more than seventy of the present number.

The difference in shape and dimension among the desks is due to the original semicircular arrangement in the Old Senate Chamber.

Not this Senate Chamber, but the Old Senate Chamber.

A desk's shape conformed to its position in the room: if on the aisle it was narrow and angled, if near the center it tended to be wider and more square. If the oldest desks could be rearranged to the original configuration, it is believed they would form a perfect semicircle.

During the mid-19th century, mahogany shelves were added near the bases of the desks. At the turn of the 20th century, the feet were enclosed with a metal grille and connected to a plenum chamber below the floor which provided ventilation.

That, Mr. President, was the air-conditioning system. We have a much better air-conditioning system now than they had then.

Inkwells and sanders atop the desks have also undergone change. Original inkwells were composed of clear cut glass, covered with square, flat tops that moved horizontally. In 1933, the remaining original inkwells were replaced by containers having hinged covers, because the earlier design was no longer manufactured.

Over the years the desks have been periodically rearranged, as new states sent senators and as party representation increased and diminished. When additional desks were required, these were generally made by private cabinetmakers, although the four newest desks—those constructed for Alaska (1959) and Hawaii (1960)—were built in the Senate's own cabinet shop.

Seven distinct numbering systems have been employed over the years to track the expanding group of desks and their locations. These numbers—both Roman and Arabic—are still visible below and inside the desks in various places. The current system, instituted in 1957, consists of Roman numerals burned into the right-hand corner of the principal crosspiece beneath the desks. The desks are not arranged on the Senate floor in numerical order. The easiest method of tracing the heritage of each desk is to read the names carved inside desk drawers.

Now, in earlier years, the Members of the Senate carved their names in the desk drawers. I hate to say that in modern times I have looked in my desk drawer and some of the occupants of this desk even wrote their name, it appears, with a ball point pen. That is not quite as classy as carving.

It appears that such inscriptions are a 20th-century tradition, for the earliest recorded names date back only to the first decade of this century. Possibly some 19th-century senators inscribed their names in the desks, but these names have been lost when drawers were refinished. Not all names in drawers were personally inscribed by the senators. Many reveal an identical hand, suggesting either that older drawer bottoms were replaced and the names recopied, or that staff members, rather than senators, took responsibility for chronicling certain holders. In recent decades, senators have adhered more closely to a tradition of personally inscribing desks.

One difficulty in verifying the desks' 19th-century assignees is the fact that for many years Senate doorkeepers closely guarded such privileged information. Isaac Bassett, Senate page and doorkeeper from 1831 through 1895, feared that souvenir hunters might damage the historic furniture if it was widely known which pieces were used by the famous Senators Clay, Calhoun, or Senator Webster. Bassett the page and the doorkeeper had reasonable cause for alarm. In April 1861, when the Sixth Massachusetts Regiment was bivouacked temporarily in the Senate Chamber, literally living in the Senate Chamber, Bassett entered the room just in time to hear the sound of splitting wood on the Democratic side. Rushing to investigate, he found a Union soldier bayonetting the desk recently vacated by Jefferson Davis, then president of the Confederacy. "Stop! Stop! What are you doing?," Bassett shouted. "That is not Jeff Davis' desk—it belongs to the government of the United States. You were sent here to protect government property, not to destroy it." Today, a small block of wood inlay on the left side of the desk marks the spot where the bayonet once struck the desk of Jefferson Davis.

Traditions associated with Senate desks continue to evolve. A recent example is the so-called 'Candy Desk". Each member of the Senate knows which desk is the candy desk. Senator George Murphy (R-CA) originated the practice of keeping a supply of candy in his desk for the enjoyment of fellow senators. This desk was subsequently passed on to other members for use, but the tradition of keeping candy in the desk that occupies that particular place in the back row of the Chamber continues today.

The custom of dividing the arrangement of Senate desks by party is almost as old as the parties themselves. Democrats traditionally sit on the presiding officer's right; Republicans on his left. But the division has not always been definitive as it is today.

In the Old Senate Chamber, an equal number of desks was placed on each side of the aisle, without regard to party size. When one party elected more than half the senators, some majority party members had to find space on the minority side. When the Senate moved to the modern Chamber in 1859, the practice of dividing the desks equally continued for several years. But during the Civil War many Southern Democrats withdrew from the Senate and Republicans took their places on the Democratic side, even though empty desks were available on "their own" side.

The new Chamber was large enough to permit a somewhat flexible seating arrangement and in 1877 the practice began of moving desks back and forth across the center aisle to permit all majority members to sit together on the appropriate side of the aisle. From time to time since then, one party has elected such an overwhelming majority that it has become necessary to again have majority members sit on the minority side. For instance, during the 60th Congress (1907–1909) ten Republicans sat on the Democratic side, while during the 75th Congress (1937–1939) thirteen Democrats sat on the Republican side. Such seating became known as the "Cherokee Strip," meaning that the overflow of majority party senators were "off their reservation" [the Cherokee Strip in Oklahoma was land belonging neither to the Indian Territory nor to the United States]. By then it had become the practice for senior senators to take front row, center aisle seats; junior majority party members who filled the "Cherokee Strip" were assigned either rear row or end seats on the minority side of the chamber.

Senators independent of either party have traditionally chosen on which side of the aisle they preferred to sit. Once, during the 1950s, when Senator Wayne Morse of Oregon had left the Republican party but not yet joined the Democrats, he placed his chair temporarily in the middle of the center aisle in order to demonstrate his independence.

The seating of the majority and minority leaders at the front row desks on either side of the center aisle is a relatively recent Senate tradition, dating back only to 1927 for the Democrats and 1937 for the Republicans. In the 19th century, party leadership was not yet institutionalized. Certain senators were recognized as leaders for reasons of personal popularity and political skill, not elected to an official post by their parties. For example, Henry Clay always occupied a rear seat near the Chamber entrance. From that position he was able to signal party members as they came in before a vote, while vigorously denying the role of party floor leader.

Not until the 1890s did party caucus chairmen emerge as floor leaders and for the most part such leaders retain regular seats. Front row desks went to senior senators in the party. For many years, the front seat on the Republican side was held by Senator Robert La Follotte, Sr., an insurgent who was frequently at odds with his party's majority. Two earlier Democratic leaders, John T. Morgan, in 1902, and Oscar W. Underwood, in 1921, took front row desks, each retaining that position after his service as leader had end. Not until Underwood left the Senate did Democratic minority leader Joseph Robinson move to the front row desk, which he continued to hold as majority leader. Following Robinson's death, the desk went to his successor majority leader, Alben Barkley. The desk has been used by Democratic leaders ever since. On the Republican side, the front row desk was held by senior senators until 1937, when minority leader Charles McNary moved there, setting a precedent that continues today.

Mr. President, the actual office that prepared this report, and it was done in February 1995, was the Office of Senate Curator. I want to thank the Senate Curator for preparing this report.

Also, in the back of this report, it gives a history of desk No. 39. This is desk No. 39, Mr. President, and it lists all of the Senators who have occupied this particular desk.

I just want to name a few of these. Some of these names may stand out. John Bankhead from Alabama occupied this particular desk. John Bankhead lived over on 19th Street, right off of Dupont Circle. John Bankhead was the father of Tallulah Bankhead. Tallulah Bankhead was one of the grand actresses during that period of time, and they lived on 19th Street, where I used to live.

Now, also, Patrick McCarran of Nevada occupied this particular desk, No. 39. He was the author, I assume, of the McCarran-Ferguson Act, which many people will recognize.

Theodore Francis Green, of Rhode Island, occupied desk No. 39. Theodore

Francis Green may have been—I do not know, that record may have been broken—but at one time he was the oldest Member to ever serve in the Senate. That may have been surpassed. I need to check and correct it. But he was the chairman of the Foreign Relations Committee immediately preceding the chairmanship of Senator J. William Fulbright of the State of Arkansas.

Another very illustrious individual who has occupied desk 39 is Estes Kefauver, from Tennessee, known for his coonskin cap and all his grand campaigning as he ran for President and as he ran for Vice President. He really was a major force in the 1950's in the Democratic Party and in American politics.

Another great Senator who has occupied desk No. 39 is Henry M. "Scoop" Jackson, of course from Washington State, who passed away just a few years ago. He truly was one of the giants of the Senate. He occupied desk 39.

Frank J. Lausche, from the State of Ohio, occupied this desk, desk No. 39. For some of you who may not know, Frank J. Lausche, to the best of my recollection, served more terms as Governor than any other Governor elected in the history of America. I think he was Governor of his State for—it seems like well over a decade and perhaps even close to 2 decades, in the State of Ohio.

Mr. President, some of this may not seem too important to a lot of people, but there may be some students around who someday would want to know more about the Senate Chamber and about the desks in the Chamber.

As Senator ROCKEFELLER and Senator COATS and myself take our constituents through the Capitol and sometimes sit with them in the galleries, sometimes people ask us about the aisle, where do the Republicans sit and where do the Democrats sit? And so we thought it might be a good time to put a little statement in the RECORD giving a little, brief history about this Chamber and some of the desks that make up this wonderful U.S. Senate Chamber.

Mr. President, I see no other Senator seeking recognition.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MEDICARE INSOLVENCY

Mr. DASCHLE. Mr. President, I was not in the Chamber an hour ago when the distinguished Senator from Utah, my colleague, Senator BENNETT, commented on remarks that I made earlier this morning. He is a person for whom I have immense respect and who I believe is a great student of many of the issues we address on the floor. But he and I have a very fundamental difference of opinion with regard to Medicare, and I wish to respond briefly to comments that he made today on that issue. I invite his reaction if he is within the sound of my voice.

He said in his remarks the Medicare trustees' report predicting insolvency only became available in April 1995; that it was not available 2 years ago when the President's deficit reduction package was debated.

The fact is that the Medicare trustees' report is available every year for all Members of Congress to see, and every year the report has been predicting insolvency of the Medicare trust fund, sometime between 1999 and the year 2003. So there should be no surprise with regard to the predictions of this year's trustees' report. I think the question is, how we will generate Medicare savings over the course of the next year, and how will we use those savings.

There are some who have advocated providing a significant tax cut for the wealthy. I think it is fair to say that when you cut Medicare to the extent that some have proposed it be cut, and then you propose a similar decrease in taxes for the very wealthiest among us, one would have to conclude that the cuts in Medicare will be used to pay for the tax cut for the wealthy. That was the main point I was making.

Regardless of whether people are willing to make that association, as valid as I believe it is, I think it is very clear everyone recognizes that, indeed, the Medicare trust fund is in serious trouble. In fact, the President's 1993 deficit reduction package addressed this issue through proposals designed to delay insolvency for several more years. Before the President's deficit reduction package was enacted, the trustees' report indicated the trust fund would be insolvent by 1999. As a result of the enactment of the 1993 reconciliation package, which all Democrats supported and every Republican opposed, we have been able to extend the viability of the trust fund for 3 more years, from the year 1999 to the year 2002. So we have made progress.

What many of us are saying now is, if we are going to continue to make progress, then clearly we have to go beyond what the reconciliation package did with respect to strengthening Medicare.

What we said last year is that we have to pass meaningful health care reform if we are to reduce further the rate of Medicare growth, without hurting beneficiaries and shifting costs onto families and businesses.

That is what we attempted to do last year. The Senator from Utah indicated that the President last year argued we needed $118 billion in additional Medicare cuts. Well, the President proposed these reductions in the rate of growth of Medicare in the context of a health reform proposal that assured costs would not be shifted onto the private sector. Clearly we get cost shifting to the private sector when we cut Medicare without addressing private sector health care cost problems. That is why so many of us argued for so long—and, unfortunately, with so little success—last year that if we are ever going to solve Medicare's problems, we have to address our entire health care system's problems. Unfortunately, Republicans opposed that effort last year.

So, Mr. President, my point in addressing this issue is to clarify again what I believe to be the real issue. The real issue is that we have to make meaningful reforms to Medicare without adversely affecting the beneficiaries and without passing whatever savings we generate on to the wealthiest among us in the form of another tax cut. Real reform is not cutting benefits to the elderly or simply shifting more costs onto them. Real reform must ensure more efficient functioning and administration of the program.

The last issue that I wish to raise with regard to Medicare has to do with the chart the distinguished Senator from Utah used. My chart is not nearly as fancy because we didn't have time to make such an elegant chart, but I think it illustrates my point.

The Senator from Utah indicated that Medicare costs were going up faster than costs in the private sector.

Well, this is only true if you look at overall costs. But if you look at a more meaningful statistic, per capita health care costs, as this chart indicates—on a per enrollee basis, from 1976 to 1984, Medicare costs rose only slightly faster than private sector costs, 14.2 percent, versus 14 percent for the private sector.

But look what has happened from the year 1984 to 1993. In that timeframe, 1984 to 1993, about 10 years, the actual increase in private sector per enrollee costs was 9.8 percent. The increase in Medicare per enrollee costs was 7.7 percent.

These are numbers given to us from HCFA, and I think they make the point I was trying to make again this morning. On a per enrollee basis, there is no doubt that Medicare costs over the last 10 years have not grown as quickly as they have in the private sector. But that, in part, is because we are continuing to do what I just said we do not want to do any more. We do not want to pass Medicare costs on to the private sector. We do not want to say, in the name of reform, all we are going to do is let the private sector take on greater responsibility for health costs.

We have to solve the problem of skyrocketing costs in the private sector, as well as those costs in Government.

And that is exactly what I said this morning and what I hope we can continue to focus on as we consider the Medicare debate.

DAVID PRYOR: A TRUE PUBLIC SERVANT

Mr. DASCHLE. Mr. President, I could not help but listen to the distinguished Senator from Arkansas just a moment ago. All of us will greatly regret his absence beginning in the next Congress.

As we all know, last week, the distinguished Senator from Arkansas, Senator PRYOR, announced his plans to retire.

As the Senate Democratic leader, I feel like pleading with him not to go; to change his mind.

What we heard just this afternoon was another illustration of the value that he is to all of us, the unique individual that he truly is.

While he has been known around town as one of the President's closest friends on Capitol Hill, he is one of my most indispensable allies in the Senate and one of the closest friends that most of us have here in the Senate.

I have constantly drawn on his experience and wisdom for advice and guidance. And I have constantly found his calming influence amidst many a Senate tempest to be essential for my own personal well being as well as that of the U.S. Senate.

But while I recognize that he is a kind, southern gentleman of the first order, I also warn, do not let that calm demeanor fool you. In the Senate, there is not a more tenacious or aggressive fighter for the causes in which he believes than DAVID PRYOR.

Shortly after his election to the House of Representatives, Congressman PRYOR went undercover as an orderly to investigate conditions in nursing homes. When the House refused to conduct hearings on the plight of America's elderly, he rounded up volunteers from local colleges, rented a trailer, and conducted his own hearings in an abandoned gas station a few blocks away from the House Office Building. When the Speaker of the House refused to establish a Committee on Aging, then-Congressman PRYOR turned his trailer into the ad hoc House Trailer Committee on the Aging and continued its investigation.

The House finally established—to no surprise of anyone who watched all of this—a Select Committee on Aging.

When OPM claimed to have cleaned up its act and made Government jobs accessible to all applicants, Senator PRYOR sent his office interns down to that agency to apply for jobs.

He then called them to testify before his Subcommittee on Federal Services, where they informed the Senate about the continuing abuses in that most important Federal job recruiting agency.

The list does not end.

He has taken on the IRS and authored and steered to passage the taxpayers' bill of rights to make our tax system fair and equitable to every citizen and every business.

He has taken on the Beltway Bandits, as he has conducted hearings and demanded more than 40 GAO reports on Government use of what he calls America's shadow government—private consultants.

He has taken on the pharmaceutical companies for the high prices they charge for prescription drugs.

He has stopped production of unsafe and unworkable chemical weapons, even though it meant jobs in his State of Arkansas.

He has conducted a longstanding crusade against what he considers time-consuming and time-wasting Senate procedures like filibusters, dilatory floor tactics, quorum calls, and extended rollcall votes.

But throughout his fights, Senator PRYOR hss remained the gentleman that he is. His fights have always been constructive, not destructive, to the national interest, We need more, not less, positive-minded, cooperative, dedicated Senators like DAVID PRYOR.

While I am tempted to ask him to stay, as his friend, I fully understand and support his reason for leaving.

He has given a lifetime of public service. As a teenager, he worked in Washington, first as a page for Representative Oren Harris, and then in the post office in the House of Representatives.

He had successful careers as an editor-publisher and as an attorney, but he always came back to public service. In 1960, he was elected to the first of three terms in the Arkansas State Legislature.

In 1966, he was elected to the first of four terms in the U.S. House of Representatives. He served two terms as Governor of Arkansas.

Since 1979, he has served in the U.S. Senate. His work in this Chamber has consumed so much of his time and attention. In addition to his most important work as chairman of the Special Committee on Aging, he has been active on the Finance Committee, the Committee on Agriculture, the Joint Committee on the Organization of Congress, the Governmental Affairs Committee. And, yes, even the Ethics Committee.

In addition to all that, he has also served as Democratic Conference secretary.

Senator PRYOR now wants to enjoy life after politics—and there is much to say for that kind of life. Senator Mitchell told me so just the other day.

Senator PRYOR's love for the Senate is exceeded only by his love for his family and his love for the beautiful State of Arkansas—both of which he will now be able to enjoy even more. I wish Senator PRYOR, Barbara, and his family the best in the years ahead and can only say that their gain is our loss.

I yield the floor.

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. The pending business is H.R. 956, and the Gorton amendment is the pending amendment.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for morning business until 5:30 p.m., with Senators allowed to speak for not to exceed 5 minutes each.

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

MEDICARE

Mr. DOLE. Mr. President, last month, the Medicare Board of Trustees issued its annual report. Four members of this committee are appointees of President Clinton—three of them currently serve in his Cabinet.

The trustees concluded that Medicare will begin to go broke next year, and will be completely bankrupt by the year 2002.

If this were to occur, no payments, by law, can be made by Medicare to pay for hospital care or for any other services paid for by the trust fund.

Thirty-three million seniors and four million disabled individuals depend on the Medicare Program every year.

It is for them, and for those who will follow, that we must commit to preserving, improving, and protecting the Medicare Program.

Tuesday, the Speaker of the House and I extended a verbal invitation to President Clinton to sit down with us and to begin working on a bipartisan plan to preserve, improve, and protect Medicare.

Judging from the President's actions in the past weeks, and from remarks he delivered earlier yesterday at the White House Conference on Aging, it appears that the President has once again chosen partisanship over leadership.

Instead of heeding the advice from his trustees, the President heeded the advice of his political pollsters, using yesterday's speech as an opportunity to engage in scare tactics and to mislead America's seniors.

Nevertheless, Speaker GINGRICH and I are willing to give the President the benefit of the doubt. Perhaps he did not watch the news Tuesday evening or read the paper yesterday morning. Perhaps no one at the White House told him of our invitation.

So, yesterday afternoon, a letter from the Speaker and myself was delivered to the White House, and I ask

unanimous consent that the text of that letter be placed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. DOLE. In this letter, we once again extend our invitation to the President, asking him to join us in a bipartisan effort to preserve, improve, and protect Medicare. It was precisely this type of bipartisan effort which saved Social Security in 1983, and it is what is needed today.

And I know a little about the 1983 Social Security effort, because I was a member of that Commission, along with Democrats and members from the private sector, appointed by the then majority leader Howard Baker in the Senate, appointed by then Speaker O'Neill in the House, and President Reagan. And it worked. A lot of people felt at that time Social Security was in deep trouble, and it was in deep trouble. It was about to go broke. The trustees had warned us it was about to go broke. It warned us years ahead it was about to go broke. As often happens around this place, nobody really thought it was going to happen.

When it finally became critical, we moved and we acted, and thanks to the efforts of our colleagues on both sides of the aisle, both sides of the Capitol and President Reagan's effort, we were able to put together a compromise which, since 1983, has secured the solvency of the Social Security trust funds. In fact, Social Security is going to be in good shape for a fairly long time. Some day we will have to address it, but right now the 1983 Social Security fix has worked.

It also appears to me that Treasury Secretary Rubin, Labor Secretary Reich, and Health and Human Services Secretary Shalala, all trustees, all of whom signed the report calling for action now have a great deal riding on the President's response.

The President's inaction to this date suggests one of two things: Either he believes his trustees are incompetent and have reached an erroneous conclusion, or he accepts their conclusion and just does not believe it is the duty of his administration to solve the problem, in which case his trustees are irrelevant. Relevancy has been a matter of some debate around this town.

If, however, he treats the recommendation of his trustees seriously, then he has only one choice: To stop searching for campaign issues and to join Congress in searching for solutions.

I hope that the President, in the same spirit we have been working with the President on welfare reform, on antiterrorism legislation, on NAFTA, GATT, and other examples I can point out where Republicans provided the majority of the votes, working with a Democratic President, I hope the President of the United States will take a look at the trustees' report.

I know there is a conference on aging, and I know the temptation frightens people, scares people and they may pick up a few seniors' votes for the President, but if we do not fix Medicare, as I have indicated, we are not going to be able to make the payments.

The year 2002 seems like a long way off. Why worry about it in 1995? Let me just suggest, by the time you get it put together and by the time you start to implement it, the time will roll by more quickly than we think.

I cannot speak for everyone on this side of the aisle, but I think most of my colleagues are ready and willing to make hard choices. We are not talking about cuts—the President says, "Oh, we can't cut services, we can't do this, we can't do this." We are suggesting every dollar saved in our efforts to protect, preserve and improve Medicare go back into Medicare; not to cut taxes for the rich—as we hear from time to time from our colleagues on the other side of the aisle—or not for budget purposes, except so far as Medicare is part of the unified budget.

So I hope that the President has received our letter and that he will seriously consider it and that he will come to the Capitol, or we can go to the White House—it makes no difference—or we can meet halfway, whatever, and talk about what we may do in a bipartisan way to begin working on what is a serious problem with Medicare.

They are the President's trustees. They are people of integrity, as far as I know; people of competence, as far as I know; people of good judgment, as far as I know. I assume this trustees' report was based on the best information available and they said we should act now. Now means precisely what now means—now, 1995.

So we are prepared to work with the President and members of this administration, we are prepared to work with our colleagues on both sides of the aisle, we are prepared to work with House Members, Democrats and Republicans, and my view is, if we are serious about this, we can do it in a very brief period of time.

So I hope that we can have some response from the President.

The other day I suggested we maybe have a bipartisan commission. That is how we made recommendations on Social Security in 1983. The President called that a gimmick. Well, it was not a gimmick. It was an idea that Speaker O'Neill had at the time and Majority Leader Baker and President Reagan had at the time, and it worked. It was not a gimmick. They made solid recommendations to Congress, and the Congress adopted the recommendations of the commission. I was proud to be a member of that commission, along with Claude Pepper, I might add, who was probably the seniors' greatest representative and voice in Congress, a Democrat from the State of Florida.

So, Mr. President, I certainly hope the President will follow up.

SENATE SCHEDULE

Mr. DOLE. Mr. President, let me say with reference to the schedule, right now there are discussions going on so we can have a substitute offered by Senators ROCKEFELLER and GORTON, and then it would be my intent to file cloture so we can bring the debate on product liability to a close. We have been on this now last week and most of this week. I am not quite certain when they will have the product complete.

I do not believe there will be any further votes today because, frankly, we wanted to move to another matter but it was objected to by my colleagues on the other side. So we will just have to wait and see what agreement can be reached, and then the substitute will be filed and then the cloture motion will be filed.

It is my intent to have the first cloture vote on Monday and if cloture is not obtained, to have a second cloture vote on Tuesday. So I say to my colleagues, we are going to have a cloture vote on Monday. It is very important we be here. We have been on this bill for 2 weeks. I do not want to frighten anybody or discourage anybody, but I can see the August recess going out the window. As much time as we take on every piece of legislation in the Senate, it does not leave the leader any alternative than to say, well, August would have been a great month to be off; a lot of us would like to have done a lot of things.

But the first thing we must do is complete our work, and as slowly as we are proceeding, I do not see how it can be done. Maybe there can be some agreements in the next few weeks, but we are behind schedule now and, I must say, unless we can catch up, I do not believe the American people expect us to be off for 30 days when a lot of the work is not done.

So we will be right here catching up unless we can do so in the next—we have time if we work together, let me put it that way.

I suggest the absence of a quorum. I withhold that request.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, what is the order of the Senate, morning business?

The PRESIDING OFFICER. The Senate is in morning business. Senators have up to 5 minutes each to speak.

A SERIOUS PROBLEM AND A SERIOUS SOLUTION

Mr. DOMENICI. Thank you, Mr. President. First, I just happened onto

the floor while our leader was speaking. I compliment him for the subject matter and for what he said. It is obvious we have a very serious American problem, and that is Medicare, and a very serious solution recommended by trustees, four of whom were the President's, two of whom are private citizens. I think our Republican leader has outlined an approach which might resolve this issue.

On the other hand, I came for another purpose. Obviously, most of my time and attention these days is devoted to how we get a balanced budget by the year 2002. But I do not choose to speak about that today.

UNITED STATES ENRICHMENT CORPORATION PRIVATIZATION ACT

Mr. DOMENICI. Mr. President, I want to speak about a bill I introduced yesterday and I did not get a chance to speak on it. It has been introduced and has been referred. It is now known as S. 755. It has a very uninteresting caption and name: United States Enrichment Corporation Privatization Act.

Actually, while that does not sound like much, we hear a lot these days about Russia, Iran, and Russian scientists having to find some way to earn a living. We hear a lot about the fact that Russia has a very significant amount of enriched uranium and that we have agreed, in a sense, to buy it.

Now we find ourselves kind of in a quagmire. Our own trade laws do not let us buy and resell the material because that is dumping. So we have a $4 billion commercial transaction going and the Russians are saying, "Fine, we made a deal, let's do it." And so we have an entity here, the U.S. Enrichment Corporation, currently in existence. It is Government owned, and thus it is corporate only in the sense that we call it a corporation. The U.S. Enrichment Corporation, when we sell it—and what we propose here has been cleared by and looked at by a lot of marketplace people—we believe it will generate $1.5 billion for the Treasury of the United States, when we take the existing Government corporation and put it on the market, make it a corporation.

One of the most difficult issues facing this enrichment corporation and the uranium industry as a whole is how uranium from the Soviet Union is allowed to enter the United States market. Currently, the Department of Commerce enforces a suspension agreement that limits the amount of uranium we can import from the Soviet Union. The suspension agreement enforces U.S. trade laws. Obviously, a straight purchase and resale into the U.S. market would result in dumping. So it will not work.

In 1993, Russia and the United States signed an agreement under which the United States would purchase up to $4 billion worth of natural uranium derived from highly enriched uranium from Soviet nuclear weapons. However, as I indicated, the U.S. trade law prevents that natural uranium from being sold in the United States. The enrichment corporation is responsible, nonetheless, for implementing the Russian agreement. As a result, the $4 billion obligation falls squarely on the enrichment corporation, the one we now have, the Government corporation, because the enrichment corporation is prevented from selling the natural uranium into the U.S. market, which would be illegal since the material is below market price. As a result, the United States Enrichment Corporation cannot pay the Russians. In turn, the Russians argue that they are being shortchanged $4 billion. I do not think one can blame them for that. We have an agreement. But our enrichment corporation cannot buy it, because if they buy it, they cannot use it.

So this legislation solves that problem by enabling the creation of a futures market for natural uranium derived from the Russian agreement. The material could only enter the U.S. market in a controlled manner starting in 2002. Thus, it is not inconsistent with our trade laws.

So this proposal preserves the United States trade commitment, protects the United States uranium industry from unfair dumping, and encourages Russia's important work of dismantling nuclear weapons to continue. This proposal enables the Russians to be able to pay the people that are doing the dismantlement work that with some of the fruits of the disarmament, namely the revenue from the natural uranium. The money would provide the cash flow necessary to keep the Russian minatom employees working to dismantle the Russian nuclear capability and, in turn, the Russians might not be so adamant about selling reactors to Iran for a billion dollars.

So in a very real way, the notion of privatization, which is given sort of a rebirth because of the last election, finds itself settling in on this situation. I happen to have the privilege of chairing the Subcommittee on Energy Research and Development that has this as one of its responsibilities. So the idea of privatizing it fell on our subcommittee, and with the work of some experts and some really exciting ideas encapsulated in this bill, we may indeed retain the enrichment corporation, that is privately owned, privately run, that can indeed make money, and we will succesfully implement the Russian agreement using the futures approach. I do not think we have seen a nicer fit and match than this. In the meantime, we pick up $1.5 billion for the U.S. Treasury.

Now, obviously, there will be a lot of questions about this, and we are understanding of that. We hope that within a month, as soon as we get the budget behind us a little bit here, we can have some hearings on this and get it to the floor this year. We think it is an exciting idea of privatization which accomplishes so many good things at one time that we want to move full speed ahead and see if we cannot get it done. I have good cosponsors. I invite other Senators to take a look. Mr. FORD is a cosponsor. He is ranking member of the subcommittee. We have Senators JOHNSTON, CAMPBELL, THOMAS, and SIMPSON.

I am sure we will have others as soon as they understand it. I look for some of those who work in foreign relations and are worried about Iran and the growing relationships of a monetary nature between Iran and Russia, I look to them to analyze this, and perhaps they can see fit to join us.

I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I come to the floor—and I listened with great interest earlier to the majority leader, the distinguished Senator from Kansas, talking about a letter that he and the Speaker of the House have written to the President asking for some bipartisan cooperation having to do with Medicare.

Mr. President, for 12 years when we had a Republican President, any time anyone would say, gee, how come Ronald Reagan does not submit a balanced budget, or George Bush does not, the standard response that would come is—mostly, I must say, from Republicans in defense of their Republican President—they would say, "Gee, the President does not spend any money, Congress spends the money." I must say, the Republican defense is accurate. Congress does spend the money. For us to say, gee, the President has the responsibility for spending the money is inaccurate. It is the Congress of the United States of America that passes laws that determine how much money we are going to collect and in what manner we are going to collect it from the American people and how we are going to allocate that money across a whole range of programs.

In fact, the Budget Enforcement Act requires the Congress to produce a budget resolution by the 15th of April, which is several weeks past.

Mr. President, if the majority leader wants to get a bipartisan movement to do something about deficit reduction, there are a number of us on this side of the aisle who are all too willing to do exactly that. It seems to me that is what we need. If we are going to get movement, it ought to be movement inside of the U.S. Congress. There is a ferocious debate. There are ideological differences. The biggest task that faces us is that deficit reduction is tough. The problem with Medicare is not

caused by mean and nasty Republicans or mean and liberal Democrats; it is caused by demographics and technology.

The good news is that we are living longer. The bad news is that it is getting more and more expensive for us to pay for the health care for those where we have made a commitment. If you think it is bad over the next 4, 5 years, you ought to see what the entitlement commission says this looks like when my generation begins to retire. This thing goes clear off the charts after the year 2008. So the insolvency of the year 2002 forecast by the trustees is only the tip of the iceberg, Mr. President.

Deficit reduction is difficult precisely because it forces us to make tough choices. This Congress needs to get about the business of doing that. I was disappointed when the President's budget did not address the issue of entitlements. Our Presidential commission worked for an entire year. We made recommendations to the President to try to do something. But I think the President made a calculated judgment. He has to say, I have a Republican Congress and I had a 1993 deficit reduction act and did not get a single Republican to vote for it. In fact, part of the Contract With America promises to take the increase in taxes on a small number of Social Security beneficiaries, about 15 percent, reduce that tax which reduces the flow in Medicare and makes the problem worse. For that and other reasons, perhaps the President decided not to address the issue of entitlements. We know what we need to do in this Congress.

I am very much concerned that this thing is going to degenerate into merely an attempt by Republicans to say, "No, we are right and the Democrats are wrong," or the Democrats saying, "No, we are right and the Republicans are wrong."

For Members to do that for very much longer, Mr. President, maybe we can survive for a week or two or three with partisan blasts back and forth across the bow, but at some point we have a lot of educating, a lot of explaining, and a lot of leading to do.

I spoke last week to the National Press Club and unfortunately the answers that I gave to some questions afterwards got most of the attention. But at the heart of my message is that in deficit reduction, there is not a free lunch. Deficit reduction is not something that we are doing just to seek political advantage or curry favor with the voters, because the voters want deficit reduction. Deficit reduction has a positive effect upon our economy because it increases savings.

The majority leader indicated we do not need to do anything with Social Security. With great respect, I disagree. I believe Social Security also needs to be reformed, because unlike the common perception of Social Security, Social Security itself is not a savings program.

I inform anyone who might be listening to this right now that Social Security is a commitment on the part of those generations that are in the work force to allow themselves to be taxed at a fixed percentage of their wages, the money going to those generations that are out of the work force, who are retired.

The program started off as a 1-percent tax on wages. The retirement age was 6 years after normal life expectancy when the program started. Today, it is 12 percent of our wages. And 12 percent of our wages, promised to pay beginning in the year 65, which is 11 years this side of normal life expectancy.

It is a demographic problem, Mr. President. I appreciate the majority leader saying we do not need to address it because we have enough money coming in, but do not tell that to a 20-year-old, a 30-year-old, or a 40-year-old.

We had Director Rivlin before the Treasury Postal Subcommittee on Appropriations this afternoon, and I asked her about the deletion of intergenerational accounting in last year's budget. She expects the report to come out.

My effective tax rate over the course of my lifetime is about 34 percent—my generation. But the generation right behind, if we do not take action with Social Security and with Medicare relatively quickly, they are looking at an effective tax rates in excess of 80 percent—in excess of 80 percent—in an economic environment where their lives are apt to be more difficult to begin with.

I believe what is needed is for Members of Congress to come and say, OK, we will fire a few shots across the bow here at Democrats, pointing out that Republicans, for 12 years when a Republican President was in the White House, said it was Congress' responsibility. Now that we have a Democrat in the White House they are not looking across the aisle and saying, as Congress we should fix it. They sent a letter to the President and said, "How come you are not doing something about this?"

I believe it is our responsibility under the Budget Enforcement Act to deal with this budget problem, and it is going to be tough. I note with great alarm a poll—in fact it has been distributed not just to Democrats but to Republicans as well, and may, in fact, have contributed not just to the President's address to his Conference on Aging, but to a remarkable address on the part of the Speaker of the House, going to the seniors coalition. He got several standing ovations, I might point out.

Why would he not? He made it sound like the Medicare solution is easy. "We will give seniors choices. We will let you keep the savings of 10 percent. If you find waste, fraud and abuse, it will be easy. We do not have it get Medicare all tied up in that nasty old budget deficit debate, we will move it aside, and it is all going to get real easy."

It is not easy. We either ask Americans to pay more or we give them less, or some combination of the two. Or we turn and honestly say to our kids that their effective tax rates will be higher. It will not be 15 percent of wages. That is what it is today. But if we do not take action in the next couple of years, that tax rate will be 20 percent. Or they will have to look to their parents and cut their benefits enormously. Time is on our side right now, Mr. President, but it is not going to be on our side for very much longer.

I genuinely hope that after we fired our few little political rounds here that the Democrats and the Republicans can, in fact, get together. We are the ones that by law have the responsibility for passing not only authorizing legislation but appropriation legislation and we have to change our laws.

I was very alarmed to read in the newspaper this polling data that shows that 45 percent of the American people would not vote for any representative who voted to reduce the increases in Medicare. Fifteen percent would vote for them, if they did.

I note again in Gerald Seib's piece in the Wall Street Journal, I believe yesterday, saying that a full 48 percent of the American people think that we are not spending enough on seniors, 48 percent.

If we think that is greedy seniors, it is not. Only 34 percent of the people over 65 say we are not spending enough. It is people 18 to 34, by over 50 percent. Less than 5 percent say we spend too much.

That is not what our budget shows, Mr. President, whether it is at the State or Federal level. No one who seriously examines our budget believes that the problem is we are not spending enough on people over the age of 65. That is not the problem we face.

I sincerely hope—I must say it may require me to do more than hope. I may have to raise my voice and do a lot of praying before we can bridge the rhetorical gap that divides the Republicans and Democrats on the Senate floor. I think there is a bipartisan group that is willing to come to the American people and begin by simply saying "This is the truth," not hyperventilate and say things that sound like we are on the side of the angels and the other side is on the side of devil, but just say, "This is the truth."

Look at the numbers. We do not fix this thing by getting rid of waste, fraud, and abuse. We will not fix this thing by sort of tinkering at the edge and say, "I will give you choice. We will put it off into managed care." That is not going to work.

We either accept responsibilities that we have as citizens to say that if we ask for something we will pay for it. And we are not going to ask for any subsidy that we neither need or deserve. That is part of the problem now.

We have an awful lot of people in America, whether corporations or individuals, that do not need subsidies and we are giving them subsidies. They make a good case for it for social or economic reasons, and we shovel the money out and find ourselves when it comes time to taking care of people who need it, we are woefully short of either the resources of trying to do anything.

I am down here right now to offer a constructive engagement to the majority leader saying that this is not the President's problem. This is not his fault. The President of the United States submits his budget. I was critical of it for leaving entitlements out and not doing the intergenerational accounting, but by law it is the Congress of the United States of America that must make these decisions.

We are now almost 4 weeks late, according to the Budget Enforcement Act, of coming up with a budget resolution. I trust that when the distinguished chairman of the Budget Committee, the Senator from New Mexico comes up with a budget, that he will need Democrats on this Senate floor to come with him and say, "We will join to make an effort to go out and explain it to the American people."

I will say what my price is, Mr. President, so it can be clear. I do not want anybody saying, "I wonder what KERREY wants?" We will not do a $300 billion, 7-year tax cut. That is for openers. That is my price. Want to negotiate a bipartisan fashion? Have to give the $300 billion tax cut? That is nonsense. What kind of nonsense is that? Give up $300 billion?

Only yourself to blame when people get up and say, "Gee, $300 billion tax cut and $300 billion Medicare cut. Aren't you paying with Medicare for the tax breaks to individuals?" It looks that way. We do not have to do much in the way of pumping hot air into that argument. It looks like that is what is going on.

Republicans have to take that $300 billion tax cut and forget it. Democrats on the other hand, will have to say we will give on entitlements. We will tell the truth on entitlements. We will inform the American people.

I believe Republicans as well will have to say, OK, maybe we scored some great political point in last year's election by alleging that when Democrats voted for the 1993 Deficit Reduction Act without a single Republican voting for it in the House or the Senate, we took a little political advantage by saying that every Social Security beneficiary had a tax increase.

Do not tell me that Republicans were not saying that. I have heard it. I have seen it in advertisements. It worked. If I was a Republican and I had not voted for that, I would have done the same thing. It is an effective way to score political points.

For gosh sakes, we cannot take that tax, I think, fairly applied at 85 percent of income, reduce it to 50 percent, that takes money out of the Medicare part A fund. That makes the problem worse, not better. That is my two opening steps.

I also think, by the way, that those of us who worked in the mainstream group last year, Republicans and Democrats, led by the distinguished Senator from Rhode Island—who worked so very hard to hold that mainstream group together—were pretty close to being on target when it came to health care. We did ask people to pay the full bill. We did ask people to share the cost of health care. We did not say there is a free lunch here.

We had a reasonable plan, it seems to me, that was in the middle. Today, of course, health care reform is not very fashionable. But we had a bipartisan group of Republicans and Democrats who worked long and hard and got very close to a piece of legislation that I think, frankly, had we had a little more time, we might have been able to pass and we might not be in this fix we are in right now, trying to figure out what we are going to do about Medicare.

If we treat Medicare only as a budget issue and not as a health care issue, we are going to find ourselves doing what none of us wants to do, in my judgment, and that is taking that couple out there who is working really hard, that American couple out there, where you have both the husband and wife—and we all know who we are talking about here—working for $5 and $6 and $7 an hour each and by the time they pay their payroll taxes and income taxes they have precious little money left; those individuals are, right now, if we treat Medicare only as a budget issue, going to find themselves paying a lot more money than they already are for health insurance. We are going to make their lives more miserable. Those Americans who say: I do not want to be on welfare; who say I do not want the Government of the United States of America to give me food stamps; I do not want to be on AFDC; I am willing to work at McDonald's; I am willing to work at Radio Shack; I am willing to work wherever I have to, but I am going to earn my own way—those are the individuals in the United States of America today that are in the greatest amount of trouble, the ones who are not asking us for anything. Those individuals are going to suffer, in my judgment, if we treat Medicare only as a budget issue.

So I say, here is one Democrat who is willing to work with Republicans. I have worked with the Senator from New Mexico on budget issues before and was pleased to be able to join with him on his U.S.A. Tax, an item that I believe in fact will generate more money for the U.S. Treasury by allowing people not to pay taxes on their savings and businesses expense off their investments that they made.

We have to look not just at how much money we are generating, we have to look at ways to generate tax money that encourage economic growth, because in the end that is going to determine whether or not we are able to pay for anything, whether it is defense, or Medicare, or Social Security, or whatever it is.

So I hope in the end of perhaps the next 3 weeks, after we have all had a little political fun here and scored our political points, that Democrats come and say: Here are our values. I am a Democrat and I believe the laws of the United States of America ought to say every single American has an opportunity to move up the economic ladder. I am willing to say you have to make an effort. There is no free lunch here. You have to work hard to do it.

But I understand, if you are making $5, $6, $7 an hour, you have a tough time paying for health insurance; that retirement does not mean much for you; you are having a difficult time with child care because it is $500 or $600 a month for a couple of kids. I understand you are frustrated because you read in the newspaper and see there is an 80-percent differential between what you can earn with a college degree and what you can earn with a high school degree, and yet you are not setting enough money aside for your kids. Then, when it comes time for you to get a college loan, you are told you are maybe making too much money; you are no longer eligible.

So I am prepared to come and say: Here are my Democratic values. Here is what I believe in as a Democrat. I will bring those arguments to the table. But when it comes to deficit reduction, we are going to have to act like Americans. At some point, I am going to have to be willing to give. I am willing to give on entitlements. I am willing to go out on Medicare, Medicaid, Social Security, and say to the American people: Here is the truth.

This is not the time, it seems to me, for us merely to hope we can score political points over the other party. This is the time for us to surprise the marketplace—and it would be a surprise if the Congress of the United States of America, in spite of the fact that we have a budget recommendation that calls for $200 billion deficits and no action on entitlements, can somehow manage to get together, Republicans and Democrats who care about deficit reduction, and surprise the marketplace and enact this year a 5- or 6- or 7-year deficit reduction plan that would get us to a balanced budget.

I think the American people would not only be pleased—they may not like some of the cuts we put in place—but I think they would be pleased because the economy of the United States of America would grow, long-term interest rates would go down, the dollar would strengthen, and we would be creating more jobs again.

I hope and pray in fact that this Congress does what the laws and the Constitution say we are supposed to do, and that is do the hard work of budgeting; make the hard choices that are required in budgeting. Then, once we have produced a budget resolution with both Republicans and Democrats on board, then it is time for us to challenge the executive branch, the President, to pony up and share some responsibility by going to the American people and saying he believes Congress has finally got it right.

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

The PRESIDING OFFICER. The clerk will please call the roll.

The bill 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.

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–833. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–834. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–835. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–836. A communication from the Acting Executive Director of the National Mediation Board, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–837. A communication from the Secretary of Housing and Urban Development's Designee to the Federal Housing Finance Board, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–838. A communication from the President of the Inter-American Foundation, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–839. A communication from the Director of Selective Service, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–840. A communication from the Executive Director of the Neighborhood Reinvestment Corporation, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–841. A communication from the Senior Counsel and Negotiator of the Office of the U.S. Trade Representative, Executive Office of the President, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–842. A communication from the Secretary of the Judicial Conference of the United States, transmitting, a draft of proposed legislation entitled "The Federal Courts Improvement Act of 1995"; to the Committee on the Judiciary.

EC–843. A communication from the Chief Justice of the Supreme Court, transmitting, pursuant to law, the report of amendments to the Federal Rules of Appellate Procedure; to the Committee on the Judiciary.

EC–844. A communication from the Attorney General, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on the Judiciary.

EC–845. A communication from the President of the Foundation of the Federal Bar Association, transmitting, pursuant to law, the report of the audit for fiscal year 1994; to the Committee on the Judiciary.

EC–846. A communication from the President of the American Academy of Arts and Letter, transmitting, pursuant to law, the report of activities for calendar year 1994; to the Committee on the Judiciary.

EC–847. A communication from the Secretary of Labor, transmitting, pursuant to law, the report and recommendations of the Reporting and Disclosure Work Group for fiscal year 1994; to the Committee on Labor and Human Resources.

EC–848. A communication from the Secretary of Education, transmitting, a draft of proposed legislation entitled "The Career Preparation Education Reform Act of 1995"; to the Committee on Labor and Human Resources.

EC–849. A communication from the Secretary of Education, transmitting, pursuant to law, the report entitled "Summary of Chapter 2 Annual Reports 1992–93"; to the Committee on Labor and Human Resources.

EC–850. A communication from the Secretary of Labor and the Executive Director of the Pension Benefit Guaranty Corporation, transmitting jointly, pursuant to law, the report of financial statements for fiscal year 1994; to the Committee on Labor and Human Resources.

EC–851. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of the financial statements of the Pension Benefit Guaranty Corporation's Single-Employer Fund for fiscal years 1993 and 1994; to the Committee on Labor and Human Resources.

EC–852. A communication from the Assistant Secretary of Education (Civil Rights), transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Labor and Human Resources.

EC–853. A communication from the Board Members of the Railroad Retirement Board, transmitting, a draft of proposed legislation entitled "The Railroad Retirement and Railroad Unemployment Insurance Amendments Act of 1995"; to the Committee on Labor and Human Resources.

EC–854. A communication from the Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Labor and Human Resources.

EC–855. A communication from the President of the U.S. Institute of Peace, transmitting, pursuant to law, the report of financial statements for fiscal years 1993 and 1994; to the Committee on Labor and Human Resources.

EC–856. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the report on cases granted equitable relief in calendar year 1994; to the Committee on Veterans' Affairs.

EC–857. A communication from the Deputy Assistant Secretary of the Air Force (Communications, Computers and Support Systems), transmitting, pursuant to law, the report of a cost comparison study to reduce the cost of operating the Mess Attendant function; to the Committee on Armed Services.

EC–858. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the annual report on the Panama Canal Treaties for fiscal year 1994; to the Committee on Armed Services.

EC–859. A communication from the Chief of Legislative Affairs, Department of the Navy, transmitting, pursuant to law, notice of the intention to offer a grant transfer; to the Committee on Armed Services.

EC–860. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report of plans for the depot-level maintenance; to the Committee on Armed Services.

EC–861. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report relative to the Trident II (D-5) missile program; to the Committee on Armed Services.

EC–862. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation entitled "The Military Construction Authorization Act for Fiscal Year 1996"; to the Committee on Armed Services.

EC–863. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation entitled "The National Defense Authorization Act for Fiscal Year 1996"; to the Committee on Armed Services.

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.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, without amendment:

S. 184. A bill to establish an Office for Rare Disease Research in the National Institutes of Health, and for other purposes (Rept. No. 104–79).

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. LAUTENBERG (for himself, Mrs. FEINSTEIN, Mr. SIMON, and Mr. LEVIN):

S. 757. A bill to amend title 10, United States Code, to terminate the Civilian Marksmanship Program; to rescind funding for the National Board for the Promotion of Rifle Practice; and for other purposes; to the Committee on Armed Services.

By Mr. HATCH (for himself, Mr. PRYOR, Mr. SIMPSON, Mr. BREAUX, Mr. LUGAR, Mr. LEAHY, Mrs. HUTCHISON, Mrs. MURRAY, Mr. BOND, Mr. KEMPTHORNE, Mr. JOHNSTON, Mr. FORD, Mr. ROBB, Mr. DORGAN, Mr. KERREY, Mr. KYL, Mr. BAUCUS, Mr. CRAIG, Mr. COCHRAN, Mr. COHEN, Mr. GRASSLEY, Mr. D'AMATO, Mr. BENNETT, and Mr. BINGAMAN):

S. 758. A bill to amend the Internal Revenue Code of 1986 to provide for S corporation reform, and for other purposes; to the Committee on Finance.

By Mr. BRADLEY (for himself and Mr. HOLLINGS):

S. 759. A bill to amend the Immigration and Nationality Act to limit the adjustment of status of aliens who are unlawfully residing in the United States; to the Committee on the Judiciary.

By Mr. ROCKEFELLER:

S. 760. A bill to establish the National Commission on the Long-Term Solvency of the Medicare Program; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. MURRAY:

S. Con. Res. 12. A concurrent resolution expressing the sense of the Congress concerning the trafficking of Burmese women and girls into Thailand for the purposes of forced prostitution; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself, Mrs. FEINSTEIN, Mr. SIMON and Mr. LEVIN):

S. 757. A bill to amend title 10, United States Code, to terminate the Civilian Marksmanship Program; to rescind funding for the National Board for the Promotion of Rifle Practice; and for other purposes; to the Committee on Armed Services.

THE CIVILIAN MARKSMANSHIP PROGRAM TERMINATION ACT OF 1995

Mr. LAUTENBERG. Mr. President, this morning I rise to introduce a bill to terminate a program that I think has long outlived its usefulness. It is called the Army Civilian Marksmanship Program.

It is no secret that I do not like this program. In fact, I offered an amendment to terminate it in the last Congress. It got 30 votes. The arguments then may not have been persuasive. But perhaps recent events will change that.

Like everyone else, I read the reports that come out about the terrorist bombing in Oklahoma City. And they are shocked by the scope of that tragedy. Every day we hear more and more news about confirmed dead and the fact that the search may in fact have to be abandoned. It is a tragedy that will live on forever in the minds of our democratic society and throughout the world.

But in one of these stories, Mr. President, I found information that members of extremist militia groups in this country may have received weapons, ammunition, and training at Army facilities under the auspices of the Civilian Marksmanship Program.

Indeed, Mark Koerneke, the leader of the Michigan-based militia group, told ABC's "Prime Time Live" that he had access to U.S. military bases in Michigan for the purpose of training through this program.

We all know that one of the individuals accused of masterminding the Oklahoma City bombing, Timothy McVeigh, was associated with the Michigan-based militia group. I do not know, Mr. President, whether Timothy McVeigh received training and ammunition under the Civilian Marksmanship Program. But I know it is possible that he did.

A few days ago, Mr. President, I wrote to Secretary Perry and urged him to conduct an investigation to determine the veracity of the reports linking members of extremist militia groups to the Civilian Marksmanship Program. I also called on the Pentagon to immediately suspend the Civilian Marksmanship Program and propose terminating it in the long run.

I ask unanimous consent that a copy of the letter I sent to Secretary Perry, along with a press report related to Mark Koerneke's comments, be inserted in the RECORD.

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

EXHIBIT 1

U.S. SENATE,
Washington, DC, May 2, 1995.

Hon. WILLIAM J. PERRY,
Secretary of Defense,
The Pentagon,
Washington, DC.

DEAR SECRETARY PERRY: Recent press reports indicate that members of extremist militia groups in this country may have received weapons, ammunition, and training at Army facilities under the auspices of the Civilian Marksmanship Program (CMP). I am writing to urge you to conduct an investigation to determine the veracity of these reports and to ask that you provide me with a list of all the clubs that participate in the CMP program. In the interim, I urge you to immediately suspend the CMP and propose terminating it in the long run.

As you know, I have long believed the CMP is a low priority program and is an egregious example of waste in government. The program promotes rifle training for civilians through a system of affiliated clubs and other organizations, and sponsors shooting competitions. As part of these activities, the program donates, loans, and sells weapons, ammunition and other shooting supplies.

The program was first established in 1903, at a time when civilian marksmanship training was believed to be important for military preparedness. Yet, according to a report by the General Accounting Office, the program now has limited military value. As Army officials told the GAO, no Army requirements exist for civilians trained in marksmanship, and no system is in place to track program-trained personnel. In a March 15, 1994 hearing in the Senate Defense Appropriations Subcommittee, Army Secretary West stated that national security objectives will be met with or without the CMP.

In essence, the CMP provides a taxpayer subsidy for recreational shooting. In light of budget deficit we face and the military needs we ought to address, this simply is not a justifiable use of scarce resources. After all, defense dollars are not used to subsidize other sports. They ought not to be used to subsidize a shooting program which has no relationship to military needs and requirements.

At a minimum we ought to ensure the CMP is not being used to train and arm members of extremist militia groups. The American people have a right to know that their tax dollars are not being used to train people who pose a threat to law abiding citizens and to peace and order in this country.

I appreciate your prompt attention to this request.

Sincerely,

FRANK P. LAUTENBERG.

U.S. RIFLERY PROGRAM MAY AID MILITIAS

(By Colum Lynch)

NEW YORK.—Even as the Clinton administration moves to monitor extremist groups that hate federal agencies, the government continues to fund a $2.5 million program that may have provided elements of such groups with low-cost surplus weapons, free bullets and access to Army training facilities.

Mark Koernke, the shortwave radio broadcaster and leader of the Michigan Militia group that disdains the federal government, suggested the embarrassing prospect that the government was aiding some of its domestic adversaries when he told ABC's "Prime Time Live" Tuesday that he had gained access to US military bases in Michigan to train through the 92-year-old Civilian Marksmanship Program.

Critics of the federal program, which provides about 1,150 civilian gun clubs around the country with access to military firing ranges and more than 40 million rounds of free ammunition, are demanding that the Pentagon immediately suspend the financing and launch an investigation into whether the program has provided training facilities and equipment to Koernke and to antigovernment militia groups.

Investigators also want to probe for possible links to Oklahoma City bombing suspect Timothy McVeigh, and brothers James and Terry Nichols, who allegedly helped McVeigh produce explosives in recent years.

"Our government may be inadvertently arming and training individuals and groups whose goal is to harm law enforcement officials and other innocent people," said Rep. Carolyn Maloney, a New York Democrat who has led an unsuccessful two-year battle in Congress to halt the program.

To be sure, many thousands of law-abiding gun enthusiasts have used the program over the years to hone their skills with no other goal than to operate their weapons safely, effectively and peacefully. In Michigan alone, there are 51 clubs with more than 6,400 members in the riflery program.

Army officials yesterday defended the program as a valuable public service, particularly useful in training youths to handle weapons. Still, the Pentagon last year suggested the program might have outlived its usefulness.

The program was started in 1903. Military officials during the Spanish-American War were appalled at the ineptitude of American marksmanship and sought to remedy that by providing rifle training to civilians in peacetime.

"It was discovered that the majority of Americans who were recruited to fight in that war couldn't hit the side of a barn," said Martha Rudd, an Army spokeswoman in Virginia. "The program has been continued ever since. And the only way that it can be made to go away is if Congress makes it go away."

In addition to providing civilian marksmen with access to military facilities, the Army also sells up to 6,000 surplus M-1 rifles annually to club participants at a bargain cost of $250 apiece. Each year, the program funds what one Army official called "the World Series of marksmanship," a shooting tournament at Camp Perry, Ohio, hosted by the Army and the National Rifle Association.

Army officials said yesterday that the riflery program is an innocent recreational affair that promotes civic virtue and in particular aids the safe training of youths ages 10 to 18. In the 1980s, Rudd said, the military worked to discourage more extreme militia organizations from participating by insisting that each club chapter include at least 10 youths.

But she said that adults are welcome to participate and that it is impossible to say whether Koernke or other groups hostile to the government received ammunition or purchased weapons through the program.

In a letter to Defense Secretary William J. Perry, Maloney requested a list of the gun clubs and military bases participating, as well as information on "links between this program and militia groups or individual extremists." Rudd said no investigation into the program had been initiated.

Maloney also circulated a bill calling on Congress to end the program.

"Long before this bombing, the Civilian Marksmanship Program stood out as one of the most ridiculous items in the federal government budget," she said. "We're slashing funding for abused children, foster care and child nutrition, yet we're subsidizing recreational marksmanship."

Indeed, the Pentagon issued a report to Congress last year that said the program no longer served a military purpose. Even conservative commentator George Will has referred to it as "petrified pork." However, largely because of lobbying by the NRA and resistance from some Democratic and Republican supporters, the program has survived.

"The NRA has been the official agent for the Civilian Marksmanship Program," contended Bob Walker, the legislative director for Handgun Control Inc., a Washington-based group advocating gun control. "In order to qualify for surplus rifles and free ammunition, one of the requirements is that you belong to the NRA. This program is a subsidy for the NRA and its members."

The NRA press office did not respond yesterday to several requests for an interview.

Mr. LAUTENBERG. Mr. President, I have long believed the Civilian Marksmanship Program is a low-priority program and an egregious example of waste in government. The program promotes rifle training for civilians through a system of affiliated clubs and other organizations, and sponsors shooting competitions. As part of these activities, the program donates, loans, and sells weapons, ammunition, and other shooting supplies.

The program was first established in 1903, soon after the Spanish-American War, at a time when civilian marksmanship training was believed to be important for military preparedness. Back then, some Federal officials were concerned that recruits often were unable to shoot straight. The officials believed that a trained corps of civilians with marksmanship skills would be useful to prepare for future military conflicts.

Mr. President, that may have made sense in 1903. But this is 1995. The Spanish-American War ended more than 90 years ago, and things have changed.

According to a report by the General Accounting Office, the program now has limited military value. As Army officials told the GAO, no Army requirements exist for civilians trained in marksmanship. In a March 15, 1994, hearing in the Senate Defense Appropriations Subcommittee, Army Secretary West stated that national security objectives will be met with or without the Civilian Marksmanship Program.

Unlike the situation in 1903 and the Spanish-American War, today we have well-trained Reserves and National Guard Forces, and we have advanced, high-technology weapons systems. The military does not need a ready supply of ordinary civilians who know how to shoot a rifle.

Even if we did need such a corps, the program does not give us one. No system is in place that tracks the program-trained personnel, and the program is not part of the Army plan for mobilizing forces in an emergency.

In essence, the Civilian Marksmanship Program provides a taxpayer subsidy for recreational shooting. In light of the budget deficit we face and the military needs we ought to address, this simply is not a justifiable use of scarce resources.

After all, defense dollars are not used to subsidize other sports. They ought not be used to subsidize a shooting program which has no relationship to military needs and requirements. Training young people to play baseball is a nice thing to do, but the Government does not subsidize Little League. We do not give children free baseballs? Why should we give them bullets?

Mr. President, Americans are deeply cynical about the Congress. They think we are controlled by narrow special interests and that we are wasting taxpayers' money on useless boondoggles. A program like bucks for bullets only reinforces that image.

It also makes people wonder about our priorities. After all, how can we close military bases and lay off thousands of defense workers while spending money on recreational gun clubs? How can we fail to fully fund Head Start if we can pass out free bullets to school kids? How can we omit funds for people unable to afford a college education if we can find millions to teach kids how to shoot?

Where is our sense of priorities? Where is our common sense?

Mr. President, I hope my colleagues will agree that it is time to end this program. At a minimum, Mr. President, we ought to ensure the Civilian Marksmanship Program is not being used to train and arm members of extremist militia groups. The American people have a right to know that their tax dollars are not being used to train people who pose a threat to law-abiding citizens and to peace and order in this country.

I urge my colleagues to cosponsor this bill, and I ask unanimous consent that a copy 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. 757

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

SECTION 1. TERMINATION OF THE CIVILIAN MARKSMANSHIP PROGRAM.

Chapter 410 of title 10, United States Code, is amended—

(1) by striking out sections 4307, 4308, 4310, 4311, 4312, and 4313;

(2) in section 4309—

(A) in subsection (a), by striking out "and by persons capable of bearing arms" and inserting in lieu thereof "law enforcement agencies"; and

(B) in subsection (b), by striking out "civilians" each place it appears in paragraphs (1) and (3) and inserting in lieu thereof "law enforcement agencies"; and

(3) in the table of sections at the beginning of chapter 410 of such title, by striking out the items relating to sections 4307, 4308, 4310, 4311, 4312, and 4313.

SEC. 2. RESCISSION OF FUNDS FOR NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE.

The unobligated balance of the funds appropriated by title II of Public Law 103-335 under the heading "NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE, ARMY" is rescinded.

SEC. 3. FISCAL YEAR 1996 FUNDING NOT AUTHORIZED FOR THE NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE.

Funds are not authorized to be appropriated for the National Board for the Promotion of Rifle Practice.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Senator from New Jersey in this legislation to rescind the appropriation for the Civilian Marksmanship Program. I do so for a number of reasons, and I want to briefly cite them.

At a time when our Government and this body is cutting virtually every program that benefits people all across the board, I think the Civilian Marksmanship Program is one program that is truly expendable and can be rescinded. As was pointed out, the military has said this program is not necessary. The General Accounting Office in 1990 found the program unnecessary and not related to the military mission.

In March 1994, the Department of Defense testified before the Defense Subcommittee on Appropriations that the Civilian Marksmanship Program was not related to our Nation's military readiness and had no effect on our national security objectives.

About a week ago, Mr. President, I had a group gathered of major law enforcement organizations to talk about the intended repeal of the assault weapons legislation, and the head of a Federal law enforcement organization handed me a copy of the National Rifle Association's letter, a 6-page direct-mail piece that went out, and said to me this was received by one of our law enforcement people who was, frankly, amazed that this kind of rhetoric could appear on an NRA direct-mail piece.

I took a look at it, and I was astonished by what I saw. Since that time, a number of Members of the Senate have commented in the Chamber on their concern about this piece. It was thought that the National Rifle Association might agree that it was hyper hyperbole and that it seemed to have a purpose to incite people to take action against the Federal Government, and it made statements which were in effect libelous; they were untrue; they were slanderous; statements like it did not matter to those of us who support the assault weapons ban that it gave "jack-booted Government thugs more power to take away our constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us."

Mr. President, I have had a lot of things said about me but never that. That is untrue. It is a lie. It is patently false and it is said for one reason and one reason only, and that is to incite people.

Then it goes on to say, "President Clinton's army of antigun Government agents continue to intimidate and harass law-abiding citizens. In Clinton's administration, if you have a badge, you have the Government's go ahead to harass, to intimidate, and to even murder law-abiding citizens."

On its face, that is slanderous and in writing it is libelous. It is factually untrue. It is said but for one reason and one reason only. And that is to incite and develop hatred against the Federal Government and the very people who carry out the intent of the laws that we in this body and the other body pass and are signed by the President and become the law of the land. I do not think this body can condone this kind of rhetoric.

Now, is this connected with the Civilian Marksmanship Program? Not directly. Not directly. But indirectly it is, because the NRA effectively participates in this program—it is estimated by some to the extent of $1 million out of the $2.5 million appropriation.

Moreover, given the association's refusal to recant this letter, a letter which is blatantly political and inciting, certainly not one of a nonpolitical organization, should Federal funds benefit a political organization of this type? I would come down and say no, Federal moneys should not go to benefit an organization that openly admits it plays a major political role in the election and in the unelection of Members of Congress and members of other local bodies.

I believe letters of this kind really defeat its purpose as a so-called nonpolitical organization.

In addition, I am disturbed about recent reports, such as the ABC "PrimeTime Live" episode and a Boston Globe article, that describe how militia members brag that they have received ammunition, surplus weaponry, and training on Army bases through the Civilian Marksmanship Program.

I do not know whether this is true or not. I have no way on my own of verifying it, but the fact is they did brag that this was the case.

In fact, my staff was recently told by the Department of Defense about a recent incident where a military security patrol monitoring an Army rifle range saw that club members were using the range and wearing Michigan militia patches. These club members were asked to leave the range, which is located at Camp Grayling, MI, on April 27.

As DOD staff admit, there is nothing in the regulations of this program to prevent militia members from joining civilian marksmanship clubs and receiving ammunition, weaponry, and access to military training facilities, because—and I stress this—the program does not check members for their membership in other organizations or limit the number of adults that can join.

So in light of these reports, which suggest this possibility to train, supply, or subsidize anti-Government extremist militias, and the letter which seems to indicate to me, and I think to other reasonable readers of the letter, that the National Rifle Association is willing to go a step further to raise the level of the rhetoric, to increase the hostility, one can certainly question the wisdom of Federal dollars going to provide weapons and bullets and training to groups who may—and I say may and I say might—use these weapons and use that training against the very people that this body empowers to carry out our laws.

So I believe the time has come to take definitive, direct action and, by that action, to send a message that we will not, in fact, tolerate this. That is why I am cosponsoring this legislation, and I hope this body will be receptive to its passage.

By Mr. HATCH (for himself, Mr. PRYOR, Mr. SIMPSON, Mr. BREAUX, Mr. LUGAR, Mr. LEAHY, Mrs. HUTCHISON, Mrs. MURRAY, Mr. BOND, Mr. KEMPTHORNE, Mr. JOHNSTON, Mr. FORD, Mr. ROBB, Mr. DORGAN, Mr. KERREY, Mr. KYL, Mr. BAUCUS, Mr. CRAIG, Mr. COCHRAN, Mr. COHEN, Mr. GRASSLEY, Mr. D'AMATO, Mr. BENNETT, and Mr. BINGAMAN):

S. 758. A bill to amend the Internal Revenue Code of 1986 to provide for S corporation reform, and for other purposes; to the Committee on Finance.

THE S CORPORATION REFORM ACT OF 1995

Mr. HATCH. Mr. President, on behalf of myself and Senator PRYOR, I rise today to introduce the S Corporation Reform Act of 1995. We are pleased to be joined by Senators SIMPSON, BREAUX, LUGAR, LEAHY, HUTCHISON, MURRAY, BOND, KEMPTHORNE, JOHNSTON, FORD, ROBB, DORGAN, KERREY of Nebraska, KYL, BAUCUS, CRAIG, COCHRAN, GRASSLEY, D'AMATO, COHEN, BENNETT, and BINGAMAN.

Mr. President, today almost 1.7 million businesses pay taxes as S corporations and the vast majority of these are small enterprises. As we all know, small business is the engine that drives American job creation. It is important to note that while in ordinary times, small businesses create half of the new jobs in this country, in times of recovery, this number jumps to 75 percent. It is obvious that the tax and economic policies of this Nation should support and sustain the creation and growth of small businesses. Our economic future depends on the health and strength of our small business sector.

This is why we are introducing a bill today to strengthen small businesses.

Mr. President, this bill will help to fine-tune the Nation's job-creating engine of small business in three ways: by improving access to capital, by making it easier to pass on family-owned businesses from one generation to the next, and by simplifying many of the outdated, unnecessary and complex tax rules that apply to S corporations.

One of the biggest problems facing small business is that of attracting

adequate capital. This bill helps to expand access to capital by S corporations by increasing the number of permitted shareholders from 35 to 50, by permitting tax-exempt organizations to be shareholders, and by allowing non-citizens to own S corporation stock. It will also modernize S corporation financing by allowing them to issue preferred stock and convertible bonds.

Further, this legislation will make it easier for one S corporation to own another corporation. Our outmoded rules already permit this, but not without a sizeable diversion of capital away from productive investment and into the pockets of lawyers and accountants. This bill's provisions will streamline small business structure and return common sense to the realm of business ownership.

Additionally, the bill will help preserve family-owned businesses by making it easier for families to establish trusts funded by S corporation shares, and by counting all members of a family who hold S corporation stock as a single shareholder. These are important provisions, Mr. President, because so many successful small businesses fail to survive beyond the first generation.

Finally, the bill will repair a number of outmoded, inefficient provisions of S corporation tax law. Among the revised rules are a provision giving fringe benefits in S corporations the same tax treatment provided to ordinary corporations, and another which will stop corporate elections from being invalidated by mere technicalities. Most importantly, all of the bill's provisions have been carefully designed to avoid creating future difficulties for America's small businesses.

In my home state of Utah, there are thousands of current and future entrepreneurs for whom this bill will provide much-needed financial and legal flexibility in the increasingly competitive marketplace. Throughout the country, small businessmen and women have been clamoring for relief from our Nation's outdated and inflexible policies regarding S corporation.

I encourage my colleagues to support this badly needed legislation, which will give small businesses the strength and flexibility they will need to thrive into the next century.

Mr. President, there is much talk these days about tax simplification and about throwing out the old tax system and starting over again with a better one that makes more sense. This debate is a very positive thing for this country and I believe it will eventually lead to some vast improvements in the way our economy operates. In the meantime, however, let us not overlook some of the relatively simple and noncontroversial changes that will make our tax system work better. This bill represents such changes. These are improvements that we can make right now that will help small and growing businesses.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 758

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "S Corporation Reform Act of 1995".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—ELIGIBLE SHAREHOLDERS OF S CORPORATION

Subtitle A—Number of Shareholders

Sec. 101. S corporations permitted to have 50 shareholders.
Sec. 102. Members of family treated as 1 shareholder.

Subtitle B—Persons Allowed As Shareholders

Sec. 111. Certain exempt organizations.
Sec. 112. Financial institutions.
Sec. 113. Nonresident aliens.
Sec. 114. Electing small business trusts.

Subtitle C—Other Provisions

Sec. 121. Expansion of post-death qualification for certain trusts.

TITLE II—QUALIFICATION AND ELIGIBILITY REQUIREMENTS FOR S CORPORATIONS

Subtitle A—One Class of Stock

Sec. 201. Issuance of preferred stock permitted.
Sec. 202. Financial institutions permitted to hold safe harbor debt.

Subtitle B—Elections and Terminations

Sec. 211. Rules relating to inadvertent terminations and invalid elections.
Sec. 212. Agreement to terminate year.
Sec. 213. Expansion of post-termination transition period.
Sec. 214. Repeal of excessive passive investment income as a termination event.

Subtitle C—Other Provisions

Sec. 221. S corporations permitted to hold subsidiaries.
Sec. 222. Treatment of distributions during loss years.
Sec. 223. Consent dividend for AAA bypass election.
Sec. 224. Treatment of S corporations under subchapter C.
Sec. 225. Elimination of pre-1983 earnings and profits.
Sec. 226. Allowance of charitable contributions of inventory and scientific property.
Sec. 227. C corporation rules to apply for fringe benefit purposes.

TITLE III—TAXATION OF S CORPORATION SHAREHOLDERS

Sec. 301. Uniform treatment of owner-employees under prohibited transaction rules.
Sec. 302. Treatment of losses to shareholders.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective date.

TITLE I—ELIGIBLE SHAREHOLDERS OF S CORPORATION

Subtitle A—Number of Shareholders

SEC. 101. S CORPORATIONS PERMITTED TO HAVE 50 SHAREHOLDERS.

Subparagraph (A) of section 1361(b)(1) (defining small business corporation) is amended by striking "35 shareholders" and inserting "50 shareholders".

SEC. 102. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

"(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

"(A) IN GENERAL.—For purposes of subsection (b)(1)(A)—

"(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

"(ii) in the case of a family with respect to which an election is in effect under subparagraph (E), all members of the family shall be treated as 1 shareholder.

"(B) MEMBERS OF THE FAMILY.—For purposes of subparagraph (A)(ii), the term 'members of the family' means the lineal descendants of the common ancestor and the spouses (or former spouses) of such lineal descendants or common ancestor.

"(C) COMMON ANCESTOR.—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 6 generations removed from the youngest generation of shareholders.

"(D) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) or (C) exists, the rules of section 152(b)(2) shall apply.

"(E) ELECTION.—An election under subparagraph (A)(ii)—

"(i) must be made with the consent of all shareholders,

"(ii) shall remain in effect until terminated, and

"(iii) shall apply only with respect to 1 family in any corporation.".

Subtitle B—Persons Allowed as Shareholders

SEC. 111. CERTAIN EXEMPT ORGANIZATIONS.

(a) CERTAIN EXEMPT ORGANIZATIONS ALLOWED TO BE SHAREHOLDERS.—

(1) IN GENERAL.—Subparagraph (B) of section 1361(b)(1) (defining small business corporation) is amended to read as follows:

"(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(7)) who is not an individual,".

(2) ELIGIBLE EXEMPT ORGANIZATIONS.—Section 1361(c) (relating to special rules for applying subsection (b)) is amended by adding at the end the following new paragraph:

"(7) CERTAIN EXEMPT ORGANIZATIONS PERMITTED AS SHAREHOLDERS.—For purposes of subsection (b)(1)(B), an organization described in section 401(a) or 501(c)(3) may be a shareholder in an S corporation."

(b) CONTRIBUTIONS OF S CORPORATION STOCK.—Section 170(e)(1) (relating to certain

contributions of ordinary income and capital gain property) is amended by adding at the end the following sentence: "For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer."

(c) SPECIAL RULES APPLICABLE TO PARTNERSHIPS AND S CORPORATIONS.—

(1) IN GENERAL.—Subsection (c) of section 512 (relating to unrelated business tax income) is amended—

(A) by inserting "or S corporation" after "partnership" each place it appears in paragraphs (1) and (3),

(B) by inserting "or shareholder" after "member" in paragraph (1), and

(C) by inserting "AND S CORPORATIONS" after "PARTNERSHIPS" in the heading.

(2) REPORTING REQUIREMENT.—Section 6037 (relating to return of S corporation) is amended by adding at the end the following new subsection:

"(c) SEPARATE STATEMENT OF ITEMS OF UNRELATED BUSINESS TAXABLE INCOME.—In the case of any S corporation regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to any shareholder described in section 1361(c)(7) shall include such information as is necessary to enable the shareholder to compute its pro rata share of the corporation's income or loss from the trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b)."

SEC. 112. FINANCIAL INSTITUTIONS.

Subparagraph (B) of section 1361(b)(2) (defining ineligible corporation) is amended to read as follows:

"(B) a financial institution which uses the reserve method of accounting for bad debts described in section 585 or 593,".

SEC. 113. NONRESIDENT ALIENS.

(a) NONRESIDENT ALIENS ALLOWED TO BE SHAREHOLDERS.—

(1) IN GENERAL.—Paragraph (1) of section 1361(b) (defining small business corporation) is amended—

(A) by adding "and" at the end of subparagraph (B),

(B) by striking subparagraph (C), and

(C) by redesignating subparagraph (D) as subparagraph (C).

(2) CONFORMING AMENDMENTS.—Paragraphs (4) and (5)(A) of section 1361(c) (relating to special rules for applying subsection (b)) are each amended by striking "subsection (b)(1)(D)" and inserting "subsection (b)(1)(C)".

(b) NONRESIDENT ALIEN SHAREHOLDER TREATED AS ENGAGED IN TRADE OR BUSINESS WITHIN UNITED STATES.—

(1) IN GENERAL.—Section 875 is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting ", and", and

(C) by adding at the end the following new paragraph:

"(3) a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the S corporation of which such individual is a shareholder is so engaged."

(2) APPLICATION OF WITHHOLDING TAX ON NONRESIDENT ALIEN SHAREHOLDERS.—Section 1446 (relating to withholding tax on foreign partners' share of effectively connected income) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) S CORPORATION TREATED AS PARTNERSHIP, ETC.—For purposes of this section—

"(1) an S corporation shall be treated as a partnership,

"(2) the shareholders of such corporation shall be treated as partners of such partnership, and

"(3) any reference to section 704 shall be treated as a reference to section 1366."

(3) CONFORMING AMENDMENTS.—

(A) The heading of section 875 is amended to read as follows:

"SEC. 875. PARTNERSHIPS; BENEFICIARIES OF ESTATES AND TRUSTS; S CORPORATIONS."

(B) The heading of section 1446 is amended to read as follows:

"SEC. 1446. WITHHOLDING TAX ON FOREIGN PARTNERS' AND S CORPORATE SHAREHOLDERS' SHARE OF EFFECTIVELY CONNECTED INCOME."

(4) CLERICAL AMENDMENTS.—

(A) The item relating to section 875 in the table of sections for subpart A of part II of subchapter N of chapter 1 is amended to read as follows:

"Sec. 875. Partnerships; beneficiaries of estates and trusts; S corporations."

(B) The item relating to section 1446 in the table of sections for subchapter A of chapter 3 is amended to read as follows:

"Sec. 1446. Withholding tax on foreign partners' and S corporate shareholders' share of effectively connected income."

(c) PERMANENT ESTABLISHMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—Section 894 (relating to income affected by treaty) is amended by adding at the end the following new subsection:

"(c) PERMANENT ESTABLISHMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—If a partnership or S corporation has a permanent establishment in the United States (within the meaning of a treaty to which the United States is a party) at any time during a taxable year of such entity, a nonresident alien individual or foreign corporation which is a partner in such partnership, or a nonresident alien individual who is a shareholder in such S corporation, shall be treated as having a permanent establishment in the United States for purposes of such treaty."

SEC. 113. ELECTING SMALL BUSINESS TRUSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (iv) the following new clause:

"(v) An electing small business trust."

(b) CURRENT BENEFICIARIES TREATED AS SHAREHOLDERS.—Subparagraph (B) of section 1361(c)(2) is amended by adding at the end the following new clause:

"(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period."

(c) ELECTING SMALL BUSINESS TRUST DEFINED.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

"(e) ELECTING SMALL BUSINESS TRUST DEFINED.—

"(1) ELECTING SMALL BUSINESS TRUST.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'electing small business trust' means any trust if—

"(i) such trust does not have as a beneficiary any person other than an individual, an estate, or an organization described in section 401(a) or 501(c)(3),

"(ii) no interest in such trust was acquired by purchase, and

"(iii) an election under this subsection applies to such trust.

"(B) CERTAIN TRUSTS NOT ELIGIBLE.—The term 'electing small business trust' shall not include—

"(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust, and

"(ii) any trust exempt from tax under this subtitle.

"(C) PURCHASE.—For purposes of subparagraph (A), the term 'purchase' means any acquisition if the basis of the property acquired is determined under section 1012.

"(2) POTENTIAL CURRENT BENEFICIARY.—For purposes of this section, the term 'potential current beneficiary' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term 'potential current beneficiary' does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of such disposition.

"(3) ELECTION.—An election under this subsection shall be made by the trustee in such manner and form, and at such time, as the Secretary may prescribe. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

"(4) CROSS REFERENCE.—

"For special treatment of electing small business trusts, see section 641(d)."

(d) TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—Section 641 (relating to imposition of tax on trusts) is amended by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—

"(1) IN GENERAL.—For purposes of this chapter—

"(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

"(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

"(2) MODIFICATIONS.—For purposes of paragraph (1), the modifications of this paragraph are the following:

"(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

"(B) The exemption amount under section 55(d) shall be zero.

"(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

"(i) The items required to be taken into account under section 1366.

"(ii) Any gain or loss from the disposition of stock in an S corporation.

"(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

"(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

"(3) TREATMENT OF REMAINDER OF TRUST AND DISTRIBUTIONS.—For purposes of determining—

"(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

"(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

"(4) TREATMENT OF UNUSED DEDUCTIONS WHERE TERMINATION OF SEPARATE TRUST.—If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

"(5) ELECTING SMALL BUSINESS TRUST.—For purposes of this subsection, the term 'electing small business trust' has the meaning given such term by section 1361(e)(1)."

Subtitle C—Other Provisions

SEC. 121. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS.

Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended—

(1) by striking "60-day period" each place it appears in clauses (ii) and (iii) and inserting "2-year period", and

(2) by striking the last sentence in clause (ii).

TITLE II—QUALIFICATION AND ELIGIBILITY REQUIREMENTS FOR S CORPORATIONS

Subtitle A—One Class of Stock

SEC. 201. ISSUANCE OF PREFERRED STOCK PERMITTED.

(a) IN GENERAL.—Section 1361(c), as amended by section 111(a)(2), is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF QUALIFIED PREFERRED STOCK.—

"(A) IN GENERAL.—Notwithstanding subsection (b)(1)(D), an S corporation may issue qualified preferred stock.

"(B) QUALIFIED PREFERRED STOCK DEFINED.—For purposes of this paragraph, the term 'qualified preferred stock' means stock described in section 1504(a)(4) which is issued to a person eligible to hold common stock of an S corporation.

"(C) DISTRIBUTIONS.—A distribution (not in part or full payment in exchange for stock) made by the corporation with respect to qualified preferred stock shall be includible as interest income of the holder and deductible to the corporation as interest expense in computing taxable income under section 1363(b) in the year such distribution is received."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 1361(b)(1), as redesignated by section 113(a)(1)(C), is amended by inserting "except as provided in paragraph (8)," before "have".

(2) Subsection (a) of section 1366 is amended by adding at the end the following new paragraph:

"(3) ALLOCATION WITH RESPECT TO QUALIFIED PREFERRED STOCK.—The holders of qualified preferred stock shall not, with respect to such stock, be allocated any of the items described in paragraph (1)."

SEC. 202. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT.

Subparagraph (B) of section 1361(c)(5) (defining straight debt) is amended by adding "and" at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following:

"(ii) in any case in which the terms of such promise include a provision under which the obligation to pay may be converted (directly or indirectly) into stock of the corporation, such terms, taken as a whole, are substantially the same as the terms which could have been obtained on the effective date of the promise from a person which is not a related person (within the meaning of section 465(b)(3)(C)) to the S corporation or its shareholders, and

"(iii) the creditor is—

"(I) an individual,

"(II) an estate,

"(III) a trust described in paragraph (2), or

"(IV) a person which is actively and regularly engaged in the business of lending money."

Subtitle B—Elections and Terminations

SEC. 211. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

"(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation—

"(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

"(B) was terminated under paragraph (2) of subsection (d),

"(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

"(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

"(A) so that the corporation is a small business corporation, or

"(B) to acquire the required shareholder consents, and

"(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end thereof the following new paragraph:

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) AUTOMATIC WAIVERS.—The Secretary of the Treasury shall provide for an automatic waiver procedure under section 1362(f) of the Internal Revenue Code of 1986 in cases in which the Secretary determines appropriate.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) and (b) shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 212. AGREEMENT TO TERMINATE YEAR.

Paragraph (2) of section 1377(a) (relating to pro rata share) is amended to read as follows:

"(2) ELECTION TO TERMINATE YEAR.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

"(B) AFFECTED SHAREHOLDERS.—For purposes of subparagraph (A), the term 'affected shareholders' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term 'affected shareholders' shall include all persons who are shareholders during the taxable year."

SEC. 213. EXPANSION OF POST-TERMINATION TRANSITION PERIOD.

(a) IN GENERAL.—Paragraph (1) of section 1377(b) (relating to post-termination transition period) is amended by striking "and" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and".

(b) DETERMINATION DEFINED.—Paragraph (2) of section 1377(b) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) a determination as defined in section 1313(a), or".

(c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.—

(1) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(2) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation), as amended by section 111(c)(2), is amended by adding at the end the following new subsection:

"(d) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and

"(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term 'subchapter S item' means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

"(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."

(3) CONFORMING AMENDMENTS.—

(A) Section 1366 is amended by striking subsection (g).

(B) Subsection (b) of section 6233 is amended to read as follows:

"(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

(C) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

SEC. 214. REPEAL OF EXCESSIVE PASSIVE INVESTMENT INCOME AS A TERMINATION EVENT.

(a) IN GENERAL.—Section 1362(d) (relating to termination) is amended by striking paragraph (3).

(b) MODIFICATION OF TAX IMPOSED ON EXCESSIVE PASSIVE INVESTMENT INCOME.—

(1) INCREASE IN THRESHOLD.—Subsections (a)(2) and (b)(1)(A)(i) of section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts) are each amended by striking "25 percent" and inserting "50 percent".

(2) TAX RATE INCREASE AFTER THIRD CONSECUTIVE YEAR.—Section 1375 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) TAX RATE INCREASE AFTER THIRD CONSECUTIVE YEAR.—

"(1) IN GENERAL.—If an S corporation is described in subsection (a) for more than 3 consecutive taxable years, then the rate of tax imposed under subsection (a) with respect to each succeeding consecutive taxable year (if any) shall be determined under the following table:

"In the case of the—	The rate of tax imposed under subsection (a) shall be equal to such rate of tax for the 3rd taxable year, plus the following percentage points:
4th taxable year	10
5th taxable year	20
6th taxable year	30
7th taxable year	40
8th taxable year and thereafter	50.

"(2) YEARS TAKEN INTO ACCOUNT.—No tax shall be increased under paragraph (1) for any taxable year beginning before January 1, 1996."

(c) CONFORMING AMENDMENTS.—

(1) Section 1362(f)(1) is amended by striking "or (3)".

(2) Subsection (b) of section 1375 is amended by striking paragraphs (3) and (4) and inserting the following new paragraphs:

"(3) SUBCHAPTER C EARNINGS AND PROFITS.—The term 'subchapter C earnings and profits' means earnings and profits of any corporation for any taxable year with respect to which an election under section 1362(a) (or under section 1372 of prior law) was not in effect.

"(4) GROSS RECEIPTS FROM SALES OF CAPITAL ASSETS (OTHER THAN STOCK AND SECURITIES).—In the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom.

"(5) PASSIVE INVESTMENT INCOME DEFINED.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'passive investment income' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

"(B) EXCEPTION FOR INTEREST ON NOTES FROM SALES OF INVENTORY.—The term 'passive investment income' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(1).

"(C) TREATMENT OF CERTAIN LENDING OR FINANCE COMPANIES.—If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term 'passive investment income' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

"(D) SPECIAL RULE FOR OPTIONS AND COMMODITY DEALINGS.—

"(i) IN GENERAL.—In the case of any options dealer or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer' activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

"(ii) DEFINITIONS.—For purposes of this subparagraph—

"(I) OPTIONS DEALER.—The term 'options dealer' has the meaning given such term by section 1256(g)(8).

"(II) COMMODITIES DEALER.—The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(III) SECTION 1256 CONTRACT.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b).

"(E) COORDINATION WITH SECTION 1374.—The amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meaning as when used in section 1374."

(3) The heading for section 1375 is amended by striking "**25**" and inserting "**50**".

(4) The table of sections for part III of subchapter S of chapter 1 is amended by striking "25" in the item relating to section 1375 and inserting "50".

(5) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1375(b)(5)".

Subtitle C—Other Provisions

SEC. 221. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.

(a) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation), as amended by section 112, is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) TREATMENT OF CERTAIN WHOLLY OWNED S CORPORATION SUBSIDIARIES.—Section 1361(b) (defining small business corporation) is amended by adding at the end thereof the following new subsection:

"(3) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—

"(A) IN GENERAL.—For purposes of this title—

"(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

"(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

"(B) QUALIFIED SUBCHAPTER S SUBSIDIARY.—For purposes of this subsection, the term 'qualified subchapter S subsidiary' means any corporation 100 percent of the stock of which is held by an S corporation as of the later of the effective date of the S election of the S corporation or the acquisition of the subsidiary, and at all times thereafter.

"(C) TREATMENT OF TERMINATIONS OF QUALIFIED SUBCHAPTER S SUBSIDIARY STATUS.—For purposes of this subtitle, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.".

(c) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Section 1375(b)(5) (defining passive investment income), as added by section 214(c)(2), is amended by adding at the end the following new subparagraph:

"(F) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of section

1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1361, as amended by sections 111(a)(2) and 201(a), is amended by striking paragraph (6) and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(2) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end the following new paragraph:

"(8) An S corporation."

SEC. 222. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) (relating to losses and deductions cannot exceed shareholder's basis in stock and debt) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 (relating to certain adjustments taken into account) is amended by adding at the end the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph", and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

SEC. 223. CONSENT DIVIDEND FOR AAA BYPASS ELECTION.

Section 1368(e)(3) (relating to election to distribute earnings first) is amended by adding at the end the following new subparagraph:

"(C) CONSENT DIVIDEND.—Under regulations prescribed by the Secretary, an S corporation may, subject to the election under this paragraph, consent to treat as a distribution the amount specified in such consent, to the extent such amount does not exceed the accumulated earnings and profits of such corporation. The amount so specified shall be considered—

"(i) as distributed in money by the corporation to its shareholders on the last day of the taxable year of the corporation and as contributed to the capital of the corporation by the shareholders on such day, and

"(ii) if any such shareholder is an organization described in section 511(a)(2), as unrelated business taxable income (as defined in section 512) to such shareholder."

SEC. 224. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.

Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders."

SEC. 225. ELIMINATION OF PRE-1983 EARNINGS AND PROFITS.

(a) IN GENERAL.—If—

(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1995,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(B) Subsection (b) of section 1375, as amended by section 214(c)(2), is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(C) The section heading for section 1375 is amended by striking "**subchapter c**" and inserting "**accumulated**".

(D) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(2) Clause (i) of section 1042(c)(4)(A), as amended by section 214(c)(5), is amended by striking "section 1375(b)(5)" and inserting "section 1375(b)(4)".

SEC. 226. ALLOWANCE OF CHARITABLE CONTRIBUTIONS OF INVENTORY AND SCIENTIFIC PROPERTY.

(a) IN GENERAL.—Section 170(e) (relating to certain contributions of ordinary income and capital gain property) is amended—

(1) by striking "(other than a corporation which is an S corporation)" in paragraph (3)(A), and

(2) by striking clause (i) of paragraph (4)(D) and by redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively.

(b) STOCK BASIS ADJUSTMENT.—Paragraph (1) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess of the deductions for charitable contributions over the basis of the property contributed."

SEC. 227. C CORPORATION RULES TO APPLY FOR FRINGE BENEFIT PURPOSES.

(a) IN GENERAL.—Section 1372 (relating to partnership rules to apply for fringe benefit purposes) is repealed.

(b) PARTNERSHIP RULES TO APPLY FOR HEALTH INSURANCE COSTS OF CERTAIN S CORPORATION SHAREHOLDERS.—Paragraph (5) of section 162(*l*) is amended to read as follows:

"(5) TREATMENT OF CERTAIN S CORPORATION SHAREHOLDERS.—

"(A) IN GENERAL.—This subsection shall apply in the case of any 2-percent shareholder of an S corporation, except that—

"(i) for purposes of this subsection, such shareholder's wages (as defined in section 3121) from the S corporation shall be treated as such shareholder's earned income (within the meaning of section 401(c)(1)), and

"(ii) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

"(B) 2-PERCENT SHAREHOLDER DEFINED.—For purposes of this paragraph, the term '2-percent shareholder' means any person who owns (or is considered as owning within the meaning of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation."

(b) CONFORMING AMENDMENT.—The table of sections for part III of subchapter S of chapter 1 is amended by striking the item relating to section 1372.

TITLE III—TAXATION OF S CORPORATION SHAREHOLDERS

SEC. 301. UNIFORM TREATMENT OF OWNER-EMPLOYEES UNDER PROHIBITED TRANSACTION RULES.

The last sentence of section 4975(d) (relating to exemptions from prohibited transactions) is amended by striking "a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982),".

SEC. 302. TREATMENT OF LOSSES TO SHAREHOLDERS.

(a) TREATMENT OF LOSSES IN LIQUIDATIONS.—Section 331 (relating to gain or loss to shareholders in corporate liquidations) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) LOSSES ON LIQUIDATIONS OF S CORPORATION.—

"(1) IN GENERAL.—The portion of any loss recognized by a shareholder of an S corporation (as defined in section 1361(a)(1)) on amounts received by such shareholder in a distribution in complete liquidation of such S corporation which does not exceed the ordinary income basis of stock of such S corporation in the hands of such shareholder shall not be treated as a loss from the sale or exchange of a capital asset but shall be treated as an ordinary loss.

"(2) ORDINARY INCOME BASIS.—For purposes of this subsection, the ordinary income basis of stock of an S corporation in the hands of a shareholder of such S corporation shall be an amount equal to the portion of such shareholder's basis in such stock which is equal to the aggregate increases in such basis under section 1367(a)(1) resulting from such shareholder's pro rata share of ordinary income of such S corporation attributable to the complete liquidation."

(b) CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER AT-RISK RULES ALLOWED.—Paragraph (3) of section 1366(d) (relating to carryover of disallowed losses and deductions to post-termination transition period) is amended by adding at the end the following new subparagraph:

"(D) AT-RISK LIMITATIONS.—To the extent that any increase in adjusted basis described

in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a)."

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act shall apply to taxable years beginning after December 31, 1995.

(b) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code (as in effect on the day before the date of the enactment of this Act) shall not be taken into account.

Mr. HATCH. Mr. President, I also want to pay specific tribute to our distinguished colleague from Arkansas, Senator PRYOR. Not only has he been a great Senator here but he has been the leader on this particular issue for years and he deserves the credit for these changes in the S corporation law. I have agreed to assistance this year in trying to get this done and we intend to get it done this year. It is something that is long overdue, and thanks to his leadership and his intellectual prowess I think we will be able to get it done. So I want to personally compliment him.

Mr. PRYOR. Mr. President, first I would like to thank my very good friend, my long-time friend and distinguished colleague from Utah, Senator HATCH.

Senator HATCH and I have worked on this proposal for a long time and we are very proud today to be able to introduce it as a bill and to also announce our 23 cosponsors from each side of the aisle in support of the S Corporation Reform Act of 1995.

Senator HATCH has been, certainly, a teacher for me in this whole process. I thank him. He has been a great ally. Truly, serving on the Finance Committee together, working with this legislation and working with a number of colleagues that we have in support, and also the number of organizations that I will list in a moment, we think truly in 1995 we can make this reform of S corporation law become a reality.

This legislation is truly the culmination of the efforts of many, many individuals and groups. It is a bipartisan effort, and certainly represents, I think, a step that Congress can and should take in order to capitalize on one of our country's most valuable resources, small business, as Senator HATCH has just so eloquently stated.

I want to thank all of the businessmen and women, attorneys, accountants, and small business organizations who have worked with me and my staff to help us to understand the unique problems of subchapter S corporations. They have helped us arrive at solutions that we think are easily administered and targeted to encourage economic growth.

The interest and enthusiasm for this effort is of special mention. At this date, the bill is endorsed by the :

Members of the S Corp Subcommittee of the American Bar Association's tax section; the U.S. Chamber of Commerce; National Federation of Independent Businesses Small Business Legislative Council; American Institute of Certified Public Accountants; American Vintners Association; American Consulting Engineers Council; American Electronics Association; Associated Builders and Contractors; Associated Equipment Distributors; National Association of Life Underwriters; National Association of Realtors; National Association of Wholesale-Distributors; National Business Owners Association; National Society of Public Accountants; and the S Corp Reform Project.

Mr. President, these fine organizations we think represent hundreds of thousands of businesses across this country that will be impacted in a good way across our country. It is quite a team, and a team that I think is very rarely put together. It is quite a team that has worked thoughtfully and diligently, and I must say, patiently, through this system to help produce a bill that Congress can pass and we should pass overwhelmingly.

Mr. President, I would like to point out to my colleagues that I introduced similar legislation in the last session of Congress. On November 19, 1993, S. 1690 was introduced with our former colleague, Senator John Danforth, who retired from the U.S. Senate. Working together, we were joined by a strongly bipartisan group of 40 of our colleagues who cosponsored that bill at that time.

Today, once again, I am so proud to be able to join my friend and colleague, Senator HATCH, with whom I very much look forward to working in order that we might take the next step and move this bill into law.

The S Corporation Reform Act of 1995 contains 27 provisions designed to usher sub-S corporations into the financial environment of the 1990's.

Subchapter S was first enacted in 1958. In fact, I think it might have been about the year that the distinguished occupant of our chair was born. On that particular date that subchapter S was passed into law, it was enacted to remove tax considerations from small business owners' decisions to incorporate. This tax treatment has proved helpful to small business over the years, especially to startup businesses, to new businesses. But subchapter S, as originally enacted in 1958, was very limiting and contained a large number of pitfalls. Today, hundreds of thousands of U.S. businesses are S corporations. These businesses are still subject to many of the oppressive restraints which date back to its original enactment in 1958.

Mr. President, it goes without saying that times have changed a great deal since that year. The financial environment is far more complex than the 1950's. Sub S limitations restrict growth opportunities, and frankly sub S needs an overhaul, and it needs an overhaul now.

This legislation we think is the overhaul we need. It is an overhaul that is doable. It is an overhaul that can give a boost to our economic recovery by creating more opportunities for capital growth and jobs throughout every segment of American economic activity.

Mr. President, these objectives are met by this legislation in ways that have been carefully thought through. There may well be other ways to encourage these goals that Senator HATCH and I share this afternoon. But I hope and expect my colleagues respectfully will come forward with their ideas should they see areas where we might improve upon this proposal. I look forward to this dialog. I urge my colleagues to examine this bill closely and to join with Senator HATCH and myself in this effort.

Mr. President, I ask unanimous consent that a copy of a summary description of the major provisions of this bill be printed in the RECORD.

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

S CORPORATION REFORM ACT OF 1995

ACCELERATING CAPITAL FORMATION

Shareholder limitations

Increase the number of permitted shareholders from 35 to 50. Currently a corporation is not eligible to be an S corporation if it has more than 35 shareholders. Increasing the number of permitted shareholders to 50 will make S corporation status available to additional closely-held businesses, allowing them the benefits of limited liability. Further, increasing the number of permitted shareholders will enable S corporations to raise more capital.

Permit tax-exempt organizations to be shareholders. This would permit charities and pension plans to be eligible shareholders of an S corporation, thereby increasing an S corporation's access to certain capital markets. Specifically, an S corporation would be able to establish an employee stock ownership plan and would have access to additional capital from charitable organizations and pension funds. The bill further provides that the flow-through income of an S corporation would be treated as unrelated business taxable income to a tax-exempt shareholder as if the S corporation's activities were conducted directly by the tax-exempt shareholder.

Allow nonresident alien shareholders to own S corporation stock. By permitting nonresident aliens to be eligible shareholders of an S corporation, the bill expands an S corporation's access to capital. In addition, it enhances an S corporation's ability to expand into international markets because it provides them the ability to offer an equity interest to individuals they are trying to recruit to grow their business overseas. To ensure collection of tax on nonresident aliens,

the bill subjects these shareholders to U.S. withholding tax on S corporation income.

Preferred Stock and Convertible Debt

Permit S corporations to issue preferred stock. Currently, S corporations may not issue more than one class of stock. By permitting S corporations to issue preferred stock, the bill increases access to capital from investors who insist on having a preferential return. The provision also facilitates family succession by permitting the older generation of shareholders to relinquish control of the corporation but maintain an equity interest. The bill also provides that a distribution made with respect to qualified preferred stock will be considered interest income to the shareholder and deductible interest expense to the S corp.

Expand Safe Harbor Debt to permit convertible debt. This provision permits S corporations to issue debt that may be converted into stock of the corporation provided that the terms of the debt are substantially the same as the terms that could have been obtained from an unrelated party. The provision will also permit the debt to be held not only by qualified shareholders, but also by a person who is actively and regularly engaged in the business of lending money. The current law provision, which prohibits conversion of the debt into stock, unnecessarily impairs the ability of an S corporation to raise investment capital.

Subsidiaries

Permit an S corporation to own greater that 80% of another corporation. Currently, S corporations may not own more than 79% of a C corporation. This provision removes this limitation to allow S corporations to hold more than 80% of the stock of a subsidiary C corporations, which will greatly enhance an S corporation's ability to achieve significant non-tax objectives in structuring their operations. In reality, taxpayers get around current rules through complex arrangements used by expensive tax planners. So, this provision allows S corporation to do directly, what they now do indirectly.

Permit S Corporations to own wholly-owned S Corporation Subsidiaries. The provision would permit an S corporation to serve as a holding company for the various operating S corporations, which would simplify management of the group. The holding company could enter into contracts on behalf of the group, serve as a common paymaster, perform other centralized management services, and facilitate obtaining financing for the group.

PRESERVING FAMILY-OWNED BUSINESSES

Expand the types of trusts that can own S corporation stock to include certain complex trusts that qualify as "electing small business trusts." This provision would enable S corporation shareholders to accomplish many estate planning goals not currently available because of current law limitations on the types of trusts that can be S corporation shareholders. Specifically, this provision would enable S corporation shareholders to establish complex trusts with multiple beneficiaries and permit the trustee to have discretion as to which beneficiary to make distributions. Providing this type of flexibility is consistent with a major underlying purpose of the S corporation—to provide a vehicle for family-owned corporations.

Count all members of a single family that own an S corporation's stock as a single shareholder. An election could be made with the consent of all shareholders to count family members that are not more than six generations removed from a common ancestor as one shareholder for purposes of the number of shareholder limitation.

REMOVING TRAPS FOR THE UNWARY

Elections

Permit the Secretary of the Treasury to treat invalid elections as effective and permit late elections. This provision permits the IRS to retroactively validate an invalid S corporation election in cases where the corporation inadvertently failed to meet the definition of a small business corporation or to obtain the required shareholder consents. The bill sets forth the criteria under which the IRS should validate such elections. The bill also provides for an automatic waiver procedure for certain inadvertent terminations. In addition, the bill provides that if a corporation fails to make a timely S election (i.e., by the 15th day of the third month of the first S corporation year) and the Secretary determines that there was reasonable cause for the failure to make such election, the Secretary may treat the election as timely made.

Passive Investment Income

Repeal excessive passive income as a termination event. Under current law, if more than 25 percent of the gross receipts of an S corporation are passive investment income, a corporate level tax will be imposed on the excess passive income. In addition, en election of S corporation status will be terminated if at the close of three consecutive years a corporation has subchapter C earnings and profits and more than 25 percent of gross receipts are from passive investment income. The provision would increase the threshold for taxing excess passive income from 25 percent to 50 percent. Importantly, the provision would also provide that an S corporation would not lose its S corporation status if it has excess passive income for three consecutive years. Instead, the corporate level tax rate applied to the excess passive income would increase by 10 percent for each successive year. The provision also makes it clear that items of income connected with an S corp's trade or business will not be considered passive income.

FRINGE BENEFITS

Place S corporation shareholders in the same position as regular corporations with respect to fringe benefits such as life insurance premiums.

Repeal restrictions on qualified plan loans made to S corporation shareholders.

TECHNICAL PROPOSALS

Treat losses on liquidation of S corporations as ordinary to the extent the loss created by ordinary income passthrough triggered the liquidation. In the case of a liquidation of an S corporation, current law can result in double taxation because of a mismatch of ordinary income (realized at the corporate level and passed through to the shareholder) and a capital loss (recognized at the shareholder level on the liquidating distribution). Although careful tax planning can avoid this result, many S corporations do not have the benefit of sophisticated tax counsel. The provision in the bill would eliminate this potential trap.

Allow interim closing of the books in termination of shareholder interest with consent of corporation and affected shareholder. Current law requires that if a shareholder terminates his interest in an S corporation during the taxable year, the corporation and all persons who are shareholders during the taxable year must agree to close the books on the date of termination. The bill would eliminate the requirement that all shareholders consent to the closing and instead requires only that the "affected shareholders" (the shareholder whose interest is terminated and all shareholders to whom such shareholder transferred shares during the year) consent to the closing. This change will ease procedural problems in preparing and filing timely corporate tax returns.

Allow charitable contributions of inventory and scientific property to be the same for S corporations as for regular corporations. S corporations would be permitted an increased charitable contribution, equivalent to the deduction amount allowed to regular corporations.

By Mr. BRADLEY (for himself and Mr. HOLLINGS):

S. 759. A bill to amend the Immigration and Nationality Act to limit the adjustment of status of aliens who are unlawfully residing in the United States; to the Committee on the Judiciary.

THE ILLEGAL IMMIGRATION ENFORCEMENT ACT OF 1995

Mr. BRADLEY. Madam President, I am pleased to introduce, for myself and Senator HOLLINGS, the Illegal Immigration Enforcement Act of 1995. This is a bill to improve the Federal Government's ability to deter illegal immigration by enhancing enforcement of existing laws that prohibit employment of illegal aliens and bar overstays by legally admitted visitors.

Madam President, I have been watching the unfolding immigration debate with real concern. As I followed California's proposition 187 campaign, I realized the arguments over illegal immigration are occurring in a vacuum. We are trying to address the impact of immigration without understanding how it relates to the deeper transformations that are shaping our society. We find ourselves susceptible to the demagogic quick fix, and risk undermining the diversity that underlies our strength as an American people.

Peter Drucker once said:

> Every few hundred years throughout Western history, a sharp transformation has occurred. In a matter of decades, society rearranges itself—its world view, its basic values; its social and political structures; its art; its key institutions. Fifty years later, there is a new world. And the people born into that world cannot even imagine the world in which their grandparents lived and into which their own parents were born.

Madam President, we are currently living through such a period of transformation. Not since the age of democratic revolution coincided with the industrial revolution has our world undergone such sweeping change as we are having today. The forces at work in our lives today are as dramatic and powerful as the Declaration of Independence and the steam engine were two centuries ago.

We face today a rapidly transforming world full of new opportunities. But those opportunities are accompanied by profound uncertainties and painful adaptations. Progress creates losers as well as winners. For example, the

death of the Soviet Union has ended our fear of nuclear annihilation. At the same time, the resulting military downsizing has cost over 1.1 million jobs in the defense sector alone since 1987. As a result, and not for the first time in our history, politicians and voters have seized upon immigration, especially illegal immigration, as a scapegoat for the deeper uncertainties we feel.

Illegal immigration has also become a lightning rod for worries about the budget crises we face at all levels of Government. There is no doubt that illegal immigrants impose a cost on taxpayers. According to the estimates by the Urban Institute, the seven most affected States pay approximately $3.1 billion yearly on education, $471 million on incarceration, and $313 million on providing medical treatment for undocumented aliens. The Urban Institute's fiscal year 1993 estimates for my own State of New Jersey, which has the sixth largest population of illegal aliens, are $146 million for education, $6.6 million for incarceration, and $0.5–3.9 million for Medicaid, for a total of $153.1–156.5 million.

Anger over illegal immigration inevitably creates a backlash against legal immigrants and even citizens of different ethnic backgrounds. However, this is a self-defeating response. Our country is increasingly a mixture of races, languages, and religions, as new immigrants arrive in search of economic promise and political freedom. By the year 2000, only 57 percent of the people who enter the work force in America will be native-born white Americans. That means that the economic future of all Americans will depend increasingly on the talents of nonwhite Americans. We will all either advance together or each of us will be diminished.

We most need to appreciate the remarkable opportunity that our racial and ethnic diversity represents for the future of our country. Our immigrants and new citizens can be our guide to the cultural rhythms in the fastest growing areas of the world economy. Given high-quality and price-competitive goods, the cultural knowledge they have can American the advantage. Our diversity can mean more jobs, more prosperity for all Americans, if we can seize the moment and not run away from it.

To do so, we must reinvigorate the institutions and organizations which integrate new arrivals into American society. I have spoken elsewhere of the crisis afflicting civil society in this country. One of the effects of the decline of the institutions of civil society is the weakening of the lodges, clubs, churches, Scout troops, and other organizations which used to give immigrants entree into American society. As a result, we all too often see groups of teenage immigrants operating on the fringes of society instead of productive new members integrating into the heart of American society.

We cannot realize the opportunity presented by our diversity if we let frustration over the Federal Government's inability to control its borders spill over into action against those who are here legally. We must control illegal immigration in order to make our country safe for legal immigration. We must control illegal immigration if we are to make our country safe for diversity.

There is no shortage of laws on the books to control illegal immigration. There are laws to punish employers and smugglers of illegal aliens, to deny illegal aliens most Government benefits and even to compensate the States for some of the costs associated with illegal immigration.

The primary problem, however, is enforcement. The Immigration and Naturalization Service is underfunded and hindered by a history of incompetence that the current management is hard put to reverse. The INS cannot keep illegal aliens out of the country, track them once they enter, or remove them once they are identified. Its various databases are, frankly, a shambles.

At the same time, certain economic interests benefit from the labor of illegal aliens. They profit from the general climate of neglect in which they can demand long hours of labor for low wages and few benefits.

Madam President, sweatshops manned by illegal men, women, and children are a disgrace to America and a drag on the fortunes of legal immigrant and American workers. These are the very inhumane labor conditions and practices we try to improve in countries abroad, but they are here, in America, today. American workers and honest American employers should not have to compete against this exploited labor force.

That brings me, Madam President, to my bill, the Illegal Immigration Enforcement Act of 1995. This legislation contains three major provisions which can help end this gentleman's agreement and will enforce the laws that are on the books. The gentleman's agreement is: pass tough legislation, but do not enforce it. Talk about being tough on illegal immigrants, but allow certain economic interests to benefit from illegal immigrant labor.

The first provision goes to, I think, the root problem, which is employment. Most illegal aliens do not come to the United States for health care or welfare or even education. They come to work. That means that the way to discourage them is not to punish their children by denying them medical care or education, as proposition 187 tries to do, but instead remove the employment magnet and remove the incentive that attracts them to the United States.

Existing law, starting with the Immigration Reform and Control Act of 1986, contains provisions which would reduce employment opportunities for illegal immigrants if they were simply enforced. Before enacting fundamental changes in this bedrock piece of legislation, we should try enforcing the laws already on the books. Empty legislating is no substitute for enforcement.

The place to start is employer sanctions. The 1986 act, better known as the Simpson-Mazzoli Act, imposes civil penalties on employers of illegal aliens of up to $10,000 per alien for repeat offenders. There is also a criminal penalty of up to 6 months imprisonment and a $3,000 fine for pattern or practice violations.

Madam President, enforcement of employer sanctions is a low priority at INS. In part, this is because the labor regulatory function is different from the policing function usually done by the investigative branch of the Immigration and Naturalization Service. As in any bureaucracy, "different" means "low priority."

In addition, this branch has a mandate to focus on antismuggling and removal of criminal aliens. By implication, everything else has low priority.

This low priority shows up in the figures. The 1986 act authorized $100 million per year to enforce employer sanctions, and even that was probably too little, but by fiscal year 1994, the appropriation had shrunk to $23 million. Funding has recovered somewhat since 1994, but remains well under the amount necessary to implement the law properly.

As a result, the number of cases investigated has declined by nearly 50 percent from 1989 to 1994. In particular, the number of investigations resulting from leads, the most productive investigations, declined from 5,118 in 1989 to 2,240 in 1994.

It is clear that as long as the same INS branch tries to perform investigative and employer sanctions functions, the latter will have to take a back seat. The way it is currently structured, employer sanctions will always take a back seat.

My bill fixes this problem by creating a separate Office for the Enforcement of Employer Sanctions and authorizing it for $100 million, the figure that was contained in the 1986 Act.

This first provision of my bill also addresses the potential for employment discrimination that exists in any employment eligibility legislation. For example, in 1990, a GAO study found that the 1986 act's employer sanctions provisions resulted in employment discrimination. The study suggested three causes for this:

First, the employers do not understand the law's requirements; second, employers do not understand how to determine employment eligibility; and

third, the prevalence of counterfeit documents increases employer confusion.

As the GAO study implies, the problem is not with the law but with the INS's failure to educate employers about what the law requires them to do. Most employers, for example, still do not know that they must fill out an I-9 employment eligibility form for every employee, whether that employee is white, African-American, Hispanic, Asian, or otherwise. This is the key to combating discrimination, educating employers that this form applies to all.

Note that the GAO study reports that an estimated 346,000 employers said that they applied the 1986 act's verification system only to persons who had a foreign appearance or accent, and recommends, among other steps, increasing employer understanding through effective education efforts.

Madam President, my bill takes this problem head on by mandating that the INS Office for the Enforcement of Employer Sanctions be charged with "educating employers on the requirements of the law, and in other ways as is necessary to prevent employment discrimination."

The bottom line, then, is that my bill does not add to employers' burdens; it does not add one single form to the mountain of paperwork they must already fill out when they hire a new legal worker. Instead, it requires the Federal Government to explain the existing law to them. In this way, it will reduce the burden of uncertainty employers now bear.

Let me point out as well that the bill complements other efforts by the administration, Senator FEINSTEIN, Senator SIMPSON—the coauthor of the 1986 act—and others, to reduce the number of documents that can be used to confirm employment eligibility, make it more difficult to counterfeit the documents and develop a more reliable national employment eligibility data base.

So, Madam President, the first initiative in the bill is to tighten up employer sanctions.

Second, the bill prevents illegal aliens from reaping the rewards of their illegal entry into the United States. It prohibits adjustment of status within the United States for those seeking employment-based legal immigrant status. Further, it disqualifies those who have worked illegally in the United States from becoming legal immigrants. Currently, those in the United States illegally can try to adjust to a legal status, based upon family relationship or employment in a hard-to-fill job.

While I do not advocate separating families, we can and should go after those who come to the United States illegally and expect to find an employer who will sponsor them for adjustment to legal status.

My bill does this by forcing those who want to adjust for work-related reasons to do so outside the United States. So that, if they are denied, they cannot simply melt back into the population. In addition, by making previous illegal employment a disqualification for adjustment of status for work-related reasons, this bill denies illegal workers the benefit of their lawbreaking.

Finally, Madam President, the bill addresses the problem of overstays by visitors admitted to this country legally. The debate on illegal immigration is focused on the United States-Mexican border. This is understandable, given the flow of illegal aliens across the border and the impact of this flow on border States. However, even sealing off the United States-Mexican border would not solve the problem of illegal immigration.

Indeed, Madam President, the United States-Mexican border is less than half of the problem. The Immigration and Naturalization Service estimates that 52 percent of all illegal aliens residing in the United States do not sneak across the U.S. border. Instead, they enter legally on visitor's visas and then overstay their visas. The percentage in my State of New Jersey is even higher, given its distance from Mexico and the sources of our illegal alien population. The INS estimates that 60 percent of New Jersey's illegal aliens enter the country legally on a visitor's visa and then just overstay, convinced that the INS will never find them. And most times they are right.

The administration and Congress, fixated on the Mexican border, are ignoring this very substantial problem. My bill addresses it by requiring the INS to develop an entry and exit data base that will alert it to overstays by legally admitted nonimmigrants. It is pretty simple. We cannot hope to control our borders unless we know who is inside them. Once we know who is overstaying his or her visa and where that person is staying, we can easily take steps to remove that person from our country. It is a very simple step. It is not taken today, so you have 52 percent of the people who come on legitimate visas disappearing into the society as a whole.

Madam President, the terrorist atrocity in Oklahoma City reminded us that we live in a dangerous world. Of course, non-Americans have no monopoly on terrorism. That is what Oklahoma City said as well. The evidence indicates that the Oklahoma City bombing was not perpetrated by an illegal alien. However, illegal aliens overstaying tourism visas have been implicated in terrorism in this country. For example, take Mohammad Salameh, who is accused of having rented the van used in the World Trade Center bombing. He was living in the United States illegally at the time of that crime. He entered this country legally, on a 6-month tourist visa, on February 17, 1988. And he still had not departed at the time of the World Trade Center bombing on February 26, 1993—5 years later.

Under current procedures, the INS had no idea of Salameh's failure to depart or his whereabouts in the United States. Under this bill, the INS would have been alerted to Salameh's overstay and illegal residence in the United States nearly 4½ years before the crime.

So, Madam President, there you have it. Enforcement of employer sanctions, restrictions on rewarding aliens for illegal work, and measures to discourage overstays by legally admitted visitors. With these steps toward enforcing existing law, we can help to build common ground here at home, to parlay our diversity into strength, to protect legal immigration, and to lead the world by the power of our example.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 759

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 "Illegal Immigration Enforcement Act of 1995".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The Government of the United States has failed to curb the influx of undocumented aliens into the United States.

(2) The social and economic costs of illegal immigration create a backlash against legal immigrants and citizens of different ethnic backgrounds.

(3) The primary magnet for illegal aliens is work.

(4) Existing law contains provisions to prevent the employment of undocumented aliens.

(5) Properly enforced, these provisions could reduce employment opportunities for illegal immigrants and thereby reduce the incentive for illegal immigration.

(6) With proper enforcement and employer education, the employer sanctions laws should not result in employment discrimination.

(7) However, these laws are not now adequately enforced.

(8) This is in part because Immigration and Naturalization Service inspectors have other, legislatively mandated, priorities that have first call on their limited resources.

(9) Many illegal immigrants adjust their status to become legal residents.

(10) This prospect is another encouragement to illegal immigration.

(11) Statistics show that approximately one-half of all illegal aliens living in the United States arrived legally on nonimmigrant visas, then failed to depart.

(12) The Immigration and Naturalization Service (INS) is currently unable to identify or locate such visa overstayers in a systematic fashion.

SEC. 3. ENFORCEMENT OF EMPLOYER SANCTIONS.

(a) ESTABLISHMENT OF NEW OFFICE.—There shall be in the Immigration and Naturalization Service of the Department of Justice an Office for the Enforcement of Employer Sanctions (in this section referred to as the "Office").

(b) FUNCTIONS.—The functions of the Office established under subsection (a) shall be—

(1) to investigate and prosecute violations of section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)); and

(2) to educate employers on the requirements of the law and in other ways as necessary to prevent employment discrimination.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $100,000,000 to carry out the functions of the Office established under subsection (a).

SEC. 4. LIMITATION ON ADJUSTMENT OF STATUS.

Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)) is amended—

(1) by striking "or (4)" and inserting "(4)"; and

(2) by inserting before the period at the end the following: "(5) any alien who seeks adjustment of status as an employment-based immigrant; or (6) any alien who was employed while the alien was an unauthorized alien, as defined in section 274(h)(3)".

SEC. 5. MONITORING OF OVERSTAYS.

The Attorney General shall develop an entry and exit data base that will permit the Attorney General to identify lawfully admitted nonimmigrants who overstay their visas.

By Mr. ROCKEFELLER:

S. 760. A bill to establish the National Commission on the Long-Term Solvency of the Medicare Program; to the Committee on Finance.

THE MEDICARE COMMISSION ACT OF 1995

• Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 760

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 "Medicare Commission Act of 1995".

SEC. 2. ESTABLISHMENT.

(a) ESTABLISHMENT.—There is established a commission to be known as the National Commission on the Long-Term Solvency of the Medicare Program (hereafter in this Act referred to as the "Commission").

(b) MEMBERSHIP.—The Commission shall be composed of 15 members appointed as follows:

(1) Five members shall be appointed by the President from among officers or employees of the executive branch, private citizens of the United States, or both. Not more than 3 members selected by the President shall be members of the same political party.

(2) Five members shall be appointed by the Majority Leader of the Senate from among members of the Senate, private citizens of the United States, or both. Not more than 3 of the members selected by the Majority Leader shall be members of the same political party.

(3) Five members shall be appointed by the Speaker of the House of Representatives from among members of the House of Representatives, private citizens of the United States, or both. Not more than 3 of the members selected by the Speaker shall be members of the same political party.

(4) DATE.—The appointments of the members of the Commission shall be made no later than November 30, 1995.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRMAN.—The Commission shall select a Chairman from among its members.

SEC. 3. DUTIES OF THE COMMISSION.

(a) ANALYSES AND RECOMMENDATIONS.—

(1) IN GENERAL.—The Commission shall—

(A) review relevant analyses of the current and long-term financial condition of the medicare trust funds;

(B) identify problems that may threaten the long-term solvency of such trust funds;

(C) analyze potential solutions to such problems that will both assure the financial integrity of the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and the provision of appropriate health benefits; and

(D) provide appropriate recommendations to the Secretary of Health and Human Services, the President, and the Congress.

(2) DEFINITION OF MEDICARE TRUST FUNDS.—For purposes of this subsection, the term "medicare trust funds" means the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t).

(b) REPORT.—The Commission shall submit its report to the President and the Congress not later than December 31, 1996.

SEC. 4. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

SEC. 5. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) OFFICERS AND EMPLOYEES OF THE FEDERAL GOVERNMENT.—All members of the Commission who are officers or employees of the Federal Government shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) PRIVATE CITIZENS OF THE UNITED STATES.—

(A) IN GENERAL.—Subject to subparagraph (B), all members of the Commission who are not officers or employees of the Federal Government shall serve without compensation for their work on the Commission.

(B) TRAVEL EXPENSES.—The members of the Commission who are not officers or employees of the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission, to the extent funds are available therefor.

(b) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. At the request of the Chairman, the Secretary of Health and Human Services shall provide the Commission with any necessary administrative and support services. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(d) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 6. TERMINATION OF THE COMMISSION.

The Commission shall terminate 30 days after the date on which the Commission submits its report under section 2(b).

SEC. 7. FUNDING FOR THE COMMISSION.

Any expenses of the Commission shall be paid from such funds as may be otherwise available to the Secretary of Health and Human Services.•

ADDITIONAL COSPONSORS

S. 216

At the request of Mr. HATCH, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 216, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 230

At the request of Mr. DOLE, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of

S. 230, a bill to prohibit U.S. assistance to countries that prohibit or restrict the transport of delivery of U.S. humanitarian assistance.

S. 327

At the request of Mr. HATCH, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 237, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 457

At the request of Mr. SIMON, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 457, a bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of U.S. immigration laws.

S. 471

At the request of Mr. BIDEN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 471, a bill to provide for the payment to States of plot allowances for certain veterans eligible for burial in a national cemetery who are buried in cemeteries of such States.

S. 506

At the request of Mr. CRAIG, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 506, a bill to amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes.

S. 515

At the request of Mr. BRADLEY, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 515, a bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through the reduction of harmful substances in meat and poultry that present a threat to public health, and for other purposes.

S. 548

At the request of Mr. ROCKEFELLER, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 548, a bill to provide quality standards for mammograms performed by the Department of Veterans Affairs.

S. 553

At the request of Mr. MOSELEY-BRAUN, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 553, a bill to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes.

S. 580

At the request of Mrs. FEINSTEIN, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 580, a bill to amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures.

S. 641

At the request of Mrs. KASSEBAUM, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 650

At the request of Mr. SHELBY, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 650, a bill to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions, and for other purposes.

S. 733

At the request of Mr. ROTH, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 733, a bill to amend title 23, United States Code, to permit States to use Federal highway funds for capital improvements to, and operating support for, intercity passenger rail service, and for other purposes.

S. 751

At the request of Mr. EXON, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 751, a bill to provide that certain games of chance conducted by a nonprofit organization not be treated as an unrelated business of such organization.

SENATE CONCURRENT RESOLUTION 12—HUMAN RIGHTS ABUSES OF BURMESE WOMEN AND GIRLS

Mrs. MURRAY submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 12

Whereas credible reports indicate that thousands of Burmese women and girls are being trafficked into Thailand with false promises of good paying jobs in restaurants or factories, and then forced to work in brothels under slavery-like conditions that include sexual and physical violence, debt bondage, exposure to HIV, passport deprivation, and illegal confinement;

Whereas credible reports also indicate that members of the Thai police force are often actively involved in, and profit from, the trafficking of Burmese women and girls for the purposes of forced prostitution;

Whereas the United States Government conducts training programs for the Thai police and United States arms and equipment are sold to the Thai police;

Whereas the Convention on the Elimination of All Forms of Discrimination Against Women requires all States Parties "to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women";

Whereas Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery calls for the complete abolition or abandonment of debt bondage;

Whereas forced labor, defined under the 1930 Forced Labor Convention as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily," is internationally prohibited;

Whereas the 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others finds the traffic in persons for the purposes of prostitution "incompatible with the dignity and worth of the human person," and calls on States Parties to punish any person who procures for the purposes of prostitution, keeps, manages or knowingly finances a brothel, or rents premises for the prostitution of others;

Whereas Assistant Secretary of State for Human Rights and Humanitarian Affairs John Shattuck has testified that the United States "urgently needs to encourage countries in which trafficking of women and children goes on with impunity to enact new laws, and to enforce existing laws. A particular target of this stepped-up law enforcement should be government officials who participate in or condone trafficking, as well as brothel owners and traffickers"; and

Whereas Secretary of State Warren Christopher stated before the 1993 World Conference on Human Rights that "(g)uaranteeing human rights is a moral imperative with respect to both women and men": Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) trafficking in persons violates the fundamental principle of human dignity, and forced prostitution involving physical coercion or debt bondage constitutes a form of forced labor and a slavery-like practice;

(2) the United States State Department should continue to press the Thai Government to strictly enforce all laws that can lead to the prosecution of those involved in trafficking and forced prostitution, including procurers, traffickers, pimps, brothel owners, and members of the Thai police who may be complicit;

(3) the State Department should ensure that Thai police participants in the United States Government-sponsored police training programs are systematically vetted to exclude those who are implicated in trafficking and forced prostitution;

(4) the executive branch should take steps to assure that weapons and equipment provided or sold to the Thai police do not become available to members of those forces who might be involved in trafficking, forced prostitution, or abuse of women and girls who are apprehended;

(5) the State Department should urge the Thai Government to protect the rights and safety of Burmese women and girls in Thailand who are freed from brothels or who are arrested as illegal immigrants because their status as trafficking victims is unclear;

(6) the United States Agency for International Development should target a portion of its assistance to Thailand for AIDS prevention and control to the foreign population in Thailand, particularly Burmese

women and girls in the Thai sex industry; and

(7) the State Department should report to Congress, within 6 months of the date of this resolution, on actions that it has taken to advocate that the Thai Government implement the above steps.

• Mrs. MURRAY. Mr. President, today I submit a resolution expressing the sense of Congress concerning the trafficking of Burmese women and girls into Thailand for the purpose of forced prostitution. This is identical to a resolution submitted in the House by Congresswoman LOUISE SLAUGHTER.

I have long supported steps to help improve the gross human rights violations inflicted on women around the world. I am outraged at reports from Human Rights Watch and others citing the egregious abuse of Burmese women and girls who are lured into Thailand with false promises to work at good paying jobs, and then confined in illegal brothels. These women and girls live in brutal conditions, often forced to work 18 hours a day with several different clients. They are subjected to physical and sexual abuse that makes escape practically impossible. In addition, there is virtually no health care or birth control available, and the HIV virus is rampant among these women and girls.

Reportedly, these abuses take place with the knowledge of the Thai Government and the likely involvement of the Thai police. I am deeply concerned by reports that these officials not only fail to protect these women and girls, but actually provide support to the brothels and brothel owners.

Mr. President, this resolution seeks to call attention to these abuses. In addition to stating that sex trafficking is a violation of the fundamental principle of human dignity, it encourages the State Department to press the Thai Government to enforce the laws that can lead to the prosecution of these traffickers. It also encourages the Thai Government to ensure the rights and safety of Burmese women and girls in Thailand. In addition, any weapons and equipment sold to the Thai police by the United States should be kept out of the hands of those individuals who may be involved in trafficking these women and girls. And, finally, the United States Agency for International Development should target a portion of its assistance to Thailand for AIDS prevention and control.

We in Congress must act now to help stop these brutal practices. The savage treatment of Burmese women and girls in Thailand, and the abuses they are subjected to, must cease. I urge my colleagues to support this resolution and help send a message that the trafficking and forced prostitution of women and girls around the world is simply unacceptable.•

AMENDMENTS SUBMITTED

THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995; COMMON SENSE PRODUCT LIABILITY REFORM ACT OF 1995

ROCKEFELLER AMENDMENT NO. 686

(Ordered to lie on the table.)

Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to amendment No. 645 proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product litigation, and for other purposes; as follows:

Strike all after "Notwithstanding" and insert the following: "section 197(b)(1), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall be the greater of—

"(1) the amount determined under section 107(b)(1); or

"(2) $250,000.".

ROCKEFELLER AMENDMENT NO. 687

(Ordered to lie on the table.)

Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to amendment No. 646 proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

Strike all after "Notwithstanding" and insert the following: "section 107(b), 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 $500,000.".

ROCKEFELLER AMENDMENT NO. 688

(Ordered to lie on the table.)

Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to amendment No. 647 proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

Strike all after "Notwithstanding" and insert the following: "section 107(b)(1), 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 3 times the sum of the amounts described in subparagraphs (A) and (B) of such section.".

BYRD AMENDMENT NO. 689

(Ordered to lie on the table.)

Mr. BYRD submitted an amendment intended to be proposed by him to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra, as follows:

At the appropriate place, insert

Since, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Since, the overall balance in the U.S.-Japan relationship has been eroded as a result of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American products to the Japanese market;

Since, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in the automobile sector, and of which $12.8 billion is attributable to auto parts flows;

Since, in July, 1993, the Administration reached a broad accord with the Government of Japan, called the "United States-Japan Framework for a New Economic Partnership", which established automotive trade regulations as one of 5 priority areas for negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Since, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill its commitments to remain as an engaged, deployed, Pacific power;

Since, after 18 months of negotiations with the Japanese, beginning in September 1993, the U.S. Trade Representative concluded that no progress had been achieved, leaving the auto parts market in Japan "virtually closed";

Since, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Since, negotiations are continuing between the United States and Japan to achieve lasting market-opening arrangements into the Japanese automobile and parts sector;

Now, therefore, be it

Declared, That it is the Sense of the Senate that—

(1) the Senate supports the efforts of the President to continue to strongly press the Government of Japan, through bilateral negotiations under the agreed "Framework for a New Economic Partnership," for sharp reductions in the trade imbalances in automotive sales and parts through the elimination of unfair and restrictive Japanese market-closing practices and regulations; and

(2) If such results-oriented negotiations are not concluded satisfactorily, appropriate and reasonable measures, up to and including trade sanctions, should be imposed in accordance with Section 301 of the Trade Act of 1974; and

(3) The Senate is prepared to fully support any such measures that might be taken against Japanese products, including appropriate legislation.

NOTICES OF HEARINGS

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging will hold a hearing on Thursday, May 11, 1995, at 9:30 a.m., in room 562 of the Dirksen Senate Office Building. The subject of the hearing is long-term care financing.

NOTICES OF HEARING CHANGE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the nomination of Charles William Burton to be a member of the Board of Directors of the U.S. Enrichment Corporation will not be considered on Wednesday, May 10, 1995, as previously announced.

For further information, please call Camille Heninger at (202) 224-5070.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, May 4, 1995, at 2 p.m. in closed/open session to receive testimony on the Ballistic Missile Defense Organization's fiscal year 1996 budget request and the future years defense program; and on the future of the ABM Treaty.

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

COMMITTEE ON FINANCE

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Thursday, May 4, 1995, at 9:30 a.m. in room SD-215, to conduct a hearing on the Vaccines for Children Program.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 4, 1995, at 10 a.m. to hear testimony on China: Illegal Trade in Human Body Parts.

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

COMMITTEE ON THE JUDICIARY

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, May 4, 1995, at 2 p.m. to hold a hearing on judicial nominees.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on primary Health Care Programs, during the session of the Senate on Thursday, May 4, 1995, at 9 a.m.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, May 4, 1995 to hold hearings on the Navy T-AO-187 *Kaiser* class oiler contract.

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

SUBCOMMITTEE ON HOUSING OPPORTUNITY AND COMMUNITY DEVELOPMENT

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Subcommittee on Housing Opportunity and Community Development of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, May 4, 1995, to conduct a hearing on Federal Housing Administration Reform.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space of the Senate Committee on Commerce, Science, and Technology be authorized to meet on May 4, 1995, on High Performance Computing and Communications and the World Wide Web at 10 a.m.

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

SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL, AND RISK ASSESSMENT

Mr. ABRAHAM. Mr. President I ask unanimous consent that the Subcommittee on Superfund, Waste Control, and Risk Assessment be granted permission to conduct an oversight hearing Thursday, May 4, at 9 a.m., regarding the Comprehensive Environmental Response, Compensation, and Liability Act.

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

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND GOVERNMENT INFORMATION

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Technology, and Government Information of the Committee on the Judiciary, be authorized to hold a hearing during the session of the Senate on Thursday, May 4, 1995, to consider "Counter-Terrorism Legislation."

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

ADDITIONAL STATEMENTS

OKLAHOMA CITY BOMBING

• Mr. ABRAHAM. Mr. President, I rise today to express my sincere condolences to the families and friends who lost their loved ones in the horrible terrorist act which took place in Oklahoma City, OK, on April 19, 1995. My prayers are with the victims, with those who lost loved ones, and with those who simply had to suffer through the agony of uncertainty. And, like every Member of this Senate, I am determined to ensure that those terrorists who committed this crime will be prosecuted to the fullest extent of the law.

Our top priority today and always ought to be the protection and safety of all the citizens of our country. Though we in the Senate will, as we already have, differ about the role of the Federal Government and the scope of Congress' authority, I think we can all agree that the first obligation of the Government is to protect its citizens from harm. We must do everything we rightfully can to prevent future tragedies of this sort and to see to it that the perpetrators of this terrible act are brought to justice.

One hope I have is that, in the process of focusing on the tragic incident in Oklahoma City involving one type of crime, we don't lost sight of the rising tide of all violent crime in this country. It did not take the massive destruction of this bombing to make violence a major problem in America. The rate of violent crime is increasing and will continue to do so if we do not put a stop to it now. Thus, it is even more urgent that government at all levels—Federal, State, and local—act accordingly to make sure that all types of criminal violence are prevented, or, that when these acts occur, to see to it that the responsible parties are severely punished for their actions.

In my view, there is a continuum in our society, with the rights of criminals on one end, and the rights of both victims of crime and the law-abiding on the other. More rights for criminals ineluctably translates to fewer rights for victims. I believe the pendulum has swung too far, and for too long, toward the right of criminals. It is time for us to shift things in the direction of law-abiding citizens and the victims of crime.

Despite our best efforts, we must recognize that, no matter what we do, we will never to able to eradicate crime, nor, though we would like to, eliminate the possibility of a violent fanatic detonating a fertilizer-based bomb. So long as human nature remains imperfect there are going to be murderers, there are going to be rapists, there are going to be violent fanatics. Prevention is critical, and all appropriate tools should be provided to law enforcement officials to aid their preemptory efforts. But what is also important is the response which our criminal justice system is able to muster after the fact.

In short, we must ensure that the perpetrators of all criminal acts in this country are—as the President promised in this case—brought to swift and certain justice. Legal reforms that would permit the rapid apprehension, trial, and punishment of the perpetrators of crime—all crimes—would go a long way

toward preventing future such crimes and assuring the victims that justice will be done.

I believe, with regard to Oklahoma City that what most affects us all is seeing the families of the victims. Like most Americans, I want to see justice for those families prevail. I would like to be able to assure those families that they will not have to suffer through a 9-month trial on TV—including, for example, several weeks devoted to selecting the perfect, dispassionate and adequately uninformed jury. And I would like to be able to tell those families that they will not then have to endure years upon years of repetitive trials and appeals, forcing them to relive over and over the nightmare of the past weeks. But I cannot.

Regrettably, our current system is all too often exploited by the guilty—at the expense of the innocent. That is why, as we move ahead with any proposed antiterrorist legislation as well as with the Senate Republican crime bill, S. 3, the Violent Crime Control and Law Enforcement Improvement Act of 1995, I hope we will seek to pass legislation which does put the rights of victims and law-abiding citizens first—where they belong.

Mr. President, on another note, I would like to also shed light on an unfortunate incident which took place during the aftermath of the bombing in Oklahoma City. Immediately after the bombing, many so-called experts and news media outlets rushed to the judgment that this attack was most probably the result of, "Islamic radical fundamentalist terrorists from the Middle East." This inaccurate and prematurely reached conclusion did great damage to the millions of loyal Arab- and Moslem-Americans in the United States, producing a wave of anti-Moslem, anti-Arab hysteria in the days after the bombing. The windows of a mosque in Oklahoma City were shattered by bullets in the days after the bombing, and death threats were called in to many mosques across the United States—including several in my home State of Michigan. In addition, many Arab- and Moslem-American students were harassed at their schools and universities. All of these unfortunate incidents could have been avoided had some in the media and their so-called terrorism experts refrained from jumping to such unsubstantiated conclusions.

The news media has a clear duty to the American people to report allegations of this type responsibly. The media has received many compliments about its coverage of Oklahoma City, much of it deserved. However, those outlets which failed to show proper restraint or which countenanced wildly speculative finger-pointing should, I believe, extend an apology to the Arab- and Moslem-American communities for the damage done to the hardworking individuals and families that comprise them. The American-Moslem community has donated $22,500 to assist the families of the victims of the bombing in Oklahoma City—a story which I hope the media will also be reporting.

That said, I want to reemphasize my comments regarding this horrible tragedy in Oklahoma. Our criminal law enforcement community needs to have the appropriate tools for prevention and punishment. If we, in the Senate, are able to pass the appropriate legislation which will assist the law enforcement officials to effectively combat crime, then perhaps criminals will be deterred from committing another tragic Oklahoma City incident anywhere in the United States. Amidst all the pain, we may have learned a very valuable lesson from this incident—the worst terrorist crime in our Nation's history. The painful lesson learned may be that Oklahoma City is a wake-up call to all Americans that we desperately need to reform our criminal laws.●

OPEN MARKETS AND FAIR TRADE ACT OF 1995

● Mr. ROCKEFELLER. Mr. President, I seek to have placed in the CONGRESSIONAL RECORD a copy of the "Open Markets and Fair Trade Act of 1995," S. 756, that was formally submitted for the RECORD yesterday, May 3, 1995, but which was not printed in full.

The "Open Markets and Fair Trade Act of 1995," will evaluate the current conditions of markets around the world for American products and instigate a process of negotiating access to those markets. It also gives the President and Congress a new tool to use in those negotiations—the threat of reciprocal trade action. Basically the bill tells our trading partners that if they refuse to give our products reasonable market access, we may impose the same kind of restrictions on their products.

Mr. President, this bill was written in response to a problem that persists year after year. I am speaking, of course, of our trade deficit, which is out of control. Certainly, we are making progress on some micro-economic levels, and the Clinton Administration has hammered out more than 70 different trade agreements over the last two-plus years—14 with Japan alone. These are helping some industries, some workers, and some parts of our economy. But they have done nothing to shrink the trade deficit. Clearly, more must be done.

Mr. President, this bill does not single out any one country. It is designed to pry open markets wherever they're closed, wherever in the world American products are denied access. This bill follows up on the Uruguay Round and looks beyond tariffs—it is designed to deal with market barriers; the internal rules in various countries that are practical impediments to American businesses. I am seeking to open more markets across the globe in order to bring about the increased exports and jobs that the GATT promised.

And I think it's high-time we question the wisdom that blames almost all of America's trade deficit problems solely on ourselves. For years, we've heard the same assertions: "Americans spend too much and save too little * * * the budget deficit is too high * * * we are growing faster than other countries so we have more money to spend." Yes, these economic realities contribute to the problem, but under President Clinton's leadership, we have reduced the Federal fiscal deficit by over $700 billion, yet the trade deficit goes up and up.

I think it's time we reverse the premise and look at how the trade deficit fuels our savings and debt problems. The inability of American companies to sell in places like Japan, China, Germany and elsewhere costs our corporations profits, our workers job opportunities, and our nation revenues—all of which weigh down our own economic growth and add to our fiscal deficit.

Whether it is a requirement for American firms to hire local agents to conduct business; cumbersome inspection and customs procedures; bans on the sale of products for dubious claims of national sovereignty or some other sort of prerogative, the simple fact is that protected sanctuary markets abroad are a major contributor to America's economic problems.

To explain this simply, I will use as an example the well known case of how Japanese manufacturers sell things like electronics in the United States at such cheap prices, even when the Yen is at a record height. I am citing Japan here, but it could be any other country that has a sanctuary market. It is well known that many Japanese-made products are cheaper in the United States than in Japan. That is because Japan's closed market is a sanctuary that effectively insulates producers from competition, and allows them to overcharge Japanese consumers, giving them enough of a profit margin at home to sell below cost here. That means American companies lose on both ends. We can't export into these markets, and their subsidized exports harm our domestic industries and costs us jobs.

My trade policy is quite simple, in addition to preserving the effectiveness of America's trade laws, I support measures that will increase American exports, and West Virginia exports specifically. Every $1 billion in exports supports about 17,000 jobs. So it follows that if we increase American exports, we will create more jobs here in the United States. And export related jobs are, on average, better, higher paying jobs. That is why I have worked so hard to introduce West Virginia businesses to foreign market opportunities.

The "Open Markets and Fair Trade Act of 1995" is about market opportunities for American firms and especially markets for American industries with the most export potential and which promote critical technologies. Most importantly, it instructs the Commerce Department to look at markets which, if we can export there, offer the greatest employment opportunities for American workers.

America cannot afford to be a market for everyone else's products when we don't get the same kind of access in return. Our economy, and the global economy, cannot sustain that kind of imbalance. The American people will only continue to support free trade if it means we are able to sell American products abroad as easily as Asian and European and Latin American manufacturers have access to our shelves and showrooms. While past negotiations should have made these points perfectly clear, the "Open Markets and Fair Trade Act of 1995" will erase any doubts that may have lingered with our trading partners.

Mr. President, I ask that following my statement the full text of the "Open Markets and Fair Trade Act of 1995" appear, followed by a summary of S. 756.

The material follows:

S. 756

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 "Open Markets and Fair Trade Act of 1995".

SEC. 2. REPORTS ON MARKET ACCESS.

(a) ANNUAL REPORTS.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the Congress a report with respect to those countries selected by the Secretary in which goods or services produced or originating in the United States, that would otherwise be competitive in those countries, do not have market access. Each report shall contain the following with respect to each such country:

(1) ASSESSMENT OF POTENTIAL MARKET ACCESS.—An assessment of the opportunities that would, but for the lack of market access, be available in the market in that country, for goods and services produced or originating in the United States in those sectors selected by the Secretary. In making such assessment, the Secretary shall consider the competitive position of such goods and services in similarly developed markets in other countries. Such assessment shall specify the time periods within which such market access opportunities should reasonably be expected to be obtained.

(2) CRITERIA FOR MEASURING MARKET ACCESS.—Objective criteria for measuring the extent to which those market access opportunities described in paragraph (1) have been obtained. The development of such objective criteria may include the use of interim objective criteria to measure results on a periodic basis, as appropriate.

(3) COMPLIANCE WITH TRADE AGREEMENTS.—An assessment of whether, and to what extent, the country concerned has materially complied with—

(A) agreements and understandings reached between the United States and that country pursuant to section 3, and

(B) existing trade agreements between the United States and that country.

Such assessment shall include specific information on the extent to which United States suppliers have achieved additional access to the market in the country concerned and the extent to which that country has complied with other commitments under such agreements and understandings.

(b) SELECTION OF COUNTRIES AND SECTORS.—

(1) IN GENERAL.—In selecting countries and sectors that are to be the subject of a report under subsection (a), the Secretary shall give priority to—

(A) any country with which the United States has a trade deficit if access to the markets in that country is likely to have significant potential to increase exports of United States goods and services; and

(B) any country, and sectors therein, in which access to the markets will result in significant employment benefits for producers of United States goods and services.

The Secretary shall also give priority to sectors which represent critical technologies, including those identified by the National Critical Technologies Panel under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683).

(2) FIRST REPORT.—The first report submitted under subsection (a) shall include those countries with which the United States has a substantial portion of its trade deficit.

(3) TRADE SURPLUS COUNTRIES.—The Secretary may include in reports after the first report such countries as the Secretary considers appropriate with which the United States has a trade surplus but which are otherwise described in subsection (a) and paragraph (1) of this subsection.

(c) OTHER SECTORS.—The Secretary shall include an assessment under subsection (a) of any country or sector for which the Trade Representative requests such assessment be made. In preparing any such request, the Trade Representative shall give priority to those barriers identified in the reports required by section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)).

(d) INFORMATION ON ACCESS BY FOREIGN SUPPLIERS.—The Secretary shall consult with the governments of foreign countries concerning access to the markets of any other country of goods and services produced or originating in those countries. At the request of the government of any such country so consulted, the Secretary may include in the reports required by subsection (a) information, with respect to that country, on such access.

SEC. 3. NEGOTIATIONS TO ACHIEVE MARKET ACCESS.

(a) NEGOTIATING AUTHORITY.—The President is authorized to enter into agreements or other understandings with the government of any country for the purpose of obtaining the market access opportunities described in the reports of the Secretary under section 2.

(b) DETERMINATION OF PRIORITY OF NEGOTIATIONS.—Upon the submission by the Secretary of each report under section 2, the Trade Representative shall determine—

(1) for which countries and sectors identified in the report the Trade Representative will pursue negotiations, during the 6-month period following submission of the report, for the purpose of concluding agreements or other understandings described in subsection (a), and the timeframe for pursuing negotiations on any other country or sector identified in the report; and

(2) for which countries and sectors identified in any previous report of the Secretary under section 2 the Trade Representative will pursue negotiations, during the 6-month period described in paragraph (1), in cases in which—

(A) negotiations were not previously pursued by the Trade Representative, or

(B) negotiations that were pursued by the Trade Representative did not result in the conclusion of an agreement or understanding described in subsection (a) during the preceding 6-month period, but are expected to result in such an agreement or understanding during the 6-month period described in paragraph (1).

For purposes of this Act, negotiations by the Trade Representative with respect to a particular sector shall be for a period of not more than 12 months.

(c) SEMIANNUAL REPORTS.—At the end of the 6-month period beginning on the date on which the Secretary's first report is submitted under section 2(a), and every 6 months thereafter, the Trade Representative shall submit to the Congress a report containing the following:

(1) REPORT WHERE NEGOTIATIONS PURSUED IN PREVIOUS 6-MONTH PERIOD.—With respect to each country and sector on which negotiations described in subsection (b) were pursued during that 6-month period—

(A) a determination of whether such negotiations have resulted in the conclusion of an agreement or understanding intended to obtain the market access opportunities described in the most recent applicable report of the Secretary, and if not—

(i) whether such negotiations are continuing because they are expected to result in such an agreement or understanding during the succeeding 6-month period; or

(ii) whether such negotiations have terminated;

(B) in the case of a positive determination made under subparagraph (A)(i) in the preceding report submitted under this subsection, a determination of whether the continuing negotiations have resulted in the conclusion of an agreement or understanding described in subparagraph (A) during that 6-month period.

(2) REPORT WHERE NEGOTIATIONS NOT PURSUED.—With respect to each country and sector on which negotiations described in subsection (b) were not pursued during that 6-month period, a determination of when such negotiations will be pursued.

SEC. 4. MONITORING OF AGREEMENTS AND UNDERSTANDINGS.

(a) IN GENERAL.—For the purpose of making the assessments required by section 2(a)(3), the Secretary shall monitor the compliance with each agreement or understanding reached between the United States and any country pursuant to section 3, and with each existing trade agreement between the United States and any country that is the subject of a report under section 2(a). In making each such assessment, the Secretary shall describe—

(1) the extent to which market access for the country and sectors covered by the agreement or understanding has been achieved; and

(2) the bilateral trade relationship with that country in that sector.

In the case of agreements or understandings reached pursuant to section 3, the description under paragraph (1) shall be done on the basis of the objective criteria set forth in the applicable report under section 2(a)(2).

(b) TREATMENT OF AGREEMENTS AND UNDERSTANDINGS.—Any agreement or understanding reached pursuant to negotiations conducted under this Act, and each existing trade agreement between the United States and a country that is the subject of a report under section 2(a), shall be considered to be a trade agreement for purposes of section 301 of the Trade Act of 1974.

SEC. 5. TRIGGERING OF SECTION 301 ACTIONS.

(a) FAILURE TO CONCLUDE AGREEMENTS.—In any case in which the Trade Representative determines under section 3(c)(1) (A)(ii) or (B) that negotiations have not resulted in the conclusion of an agreement or understanding described in section 3(a), each restriction on, or barrier or impediment to, access to the markets of the country concerned that was the subject of such negotiations shall, for purposes of title III of the Trade Act of 1974, be considered to be an act, policy, or practice determined under section 304 of that Act to be an act, policy, or practice that is unreasonable and discriminatory and burdens or restricts United States commerce. The Trade Representative shall determine what action to take under section 301(b) of that Act in response to such act, policy, or practice.

(b) NONCOMPLIANCE WITH AGREEMENTS OR UNDERSTANDINGS.—In any case in which the Secretary determines, in a report submitted under section 2(a), that a foreign country is not in material compliance with—

(1) any agreement or understanding concluded pursuant to negotiations conducted under section 3, or

(2) any existing trade agreement between the United States and that country,

the Trade Representative shall determine what action to take under section 301(a) of the Trade Act of 1974. For purposes of section 301 of that Act, a determination of noncompliance described in the preceding sentence shall be treated as a determination made under section 304 of that Act.

SEC. 6. EXPEDITED PROCEDURES FOR CERTAIN PRESIDENTIAL ACTIONS.

(a) AUTHORITY FOR RECIPROCAL ACTIONS.—In any case in which—

(1) section 5 applies,

(2) the President determines that reciprocal action should be taken by the United States in response to—

(A) a restriction, barrier, or impediment referred to in section 5(a) with respect to access to the market of a country, or

(B) noncompliance with an agreement, understanding, or trade agreement referred to in section 5(b),

as the case may be,

(3) changes in existing law or new statutory authority is necessary for such reciprocal action to be taken, and

(4) the President, within 30 days (excluding any day described in section 154(b) of the Trade Act of 1974) after—

(A) the determination of the Trade Representative under section 3(c)(1)(A)(ii) or (B), or

(B) the determination of the Secretary in the applicable report under section 2(a),

as the case may be, submits to the Congress a draft of implementing legislation with respect to the changes or authority described in paragraph (3),

then subsection (c) applies.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "reciprocal action" means action that is taken in direct response to a restriction on, or barrier or impediment to, access to the market in another country and is comparable or of equivalent effect to such restriction, barrier, or impediment; and

(2) the term "implementing legislation" means a bill of either House of Congress which is introduced as provided in subsection (c) and which contains provisions necessary to make the changes or provide the authority described in subsection (a)(3).

(c) PROCEDURES FOR IMPLEMENTING LEGISLATION.—On the day on which implementing legislation is submitted to the House of Representatives and the Senate under subsection (a), the implementing legislation shall be introduced and referred as provided in section 151(c)(1) of the Trade Act of 1974 for implementing bills under such section. The provisions of subsections (d), (e), (f), and (g) of section 151 of such Act shall apply to implementing legislation to the same extent as such subsections apply to implementing bills.

(d) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 7. URUGUAY ROUND AGREEMENTS NOT AFFECTED.

Nothing in this Act shall be construed to violate any provision of the agreements approved by the Congress in section 101(a)(1) of the Uruguay Round Agreements Act (19 U.S.C. 3511(a)(1)).

SEC. 8. DEFINITIONS.

As used in this Act:

(1) EXISTING TRADE AGREEMENT BETWEEN THE UNITED STATES AND A COUNTRY.—An "existing trade agreement" between the United States and another country means any trade agreement or understanding that was entered into between the United States and that country before the date of the enactment of this Act and is in effect on such date. Such term includes, but is not limited to—

(A) with respect to Japan—

(i) the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Semiconductor Products, signed in 1986;

(ii) the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Semiconductor Products, signed in 1991;

(iii) the United States-Japan Wood Products Agreement, signed on June 5, 1990;

(iv) Measures Related to Japanese Public Sector Procurements of Computer Products and Services, signed on January 10, 1992;

(v) the Tokyo Declaration on the U.S.-Japan Global Partnership, signed on January 9, 1992; and

(vi) the Cellular Telephone and Third-Party Radio Agreement, signed in 1989;

(B) with respect to the European Union—

(i) the Agreement Concerning the Application of the GATT Agreement on Trade in Civil Aircraft Between the European Economic Community and the Government of the United States of America on trade in large civil aircraft, with annexes, entered into force on July 17, 1992;

(ii) the Agreement Concerning Procurement Between the United States and the European Union, signed April 15, 1994; and

(iii) the Memorandum of Understanding (MOU) on Procurement Between the United States and the European Union, signed May 25, 1993; and

(C) with respect to the People's Republic of China—

(i) the Memorandum of Understanding (MOU) on the Protection of Intellectual Property Rights Between the United States and the People's Republic of China, signed January 17, 1992;

(ii) the Memorandum of Understanding (MOU) on Market Access Between the United States and the People's Republic of China, signed October 10, 1992;

(iii) the Bilateral Textile Agreement Between the United States and the People's Republic of China, signed January 17, 1994; and

(iv) an exchange of letters with an attached action plan between the United States and the People's Republic of China, signed February 26, 1995, relating to intellectual property rights.

(2) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

(3) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

THE OPEN MARKETS AND FAIR TRADE ACT OF 1995—SUMMARY

GOAL

The legislation will help the United States develop a systematic, long-term trade policy that will pry open foreign markets for American exporters. This bill supports the Clinton Administration's results-oriented trade policy.

The U.S. has accumulated more than $1 trillion in merchandise trade deficits since 1980. Countries like Japan—which accounted for more than 43% of last years deficit and China, which accounted for almost 20% of last years trade deficit, continue to exclude U.S. products from their markets.

This legislation will create a process for defining what our goals and objectives should be in trade negotiations. It will help ensure that our trade negotiations achieve measurable results, not just empty promises. Additionally, the legislation will grant the President the authority to have Congress grant him reciprocal trade authority on an expedited basis.

SPECIFICS

The legislation instructs the Commerce Department to choose a range of important American goods and services, and study how well those products do in foreign markets. Then we'll understand how well we should be doing if trade were free and fair. Commerce will outline clear, objective criteria for gaining market access and the USTR will be given authority to negotiate to achieve these or similar goals.

The bill requires that in developing objective criteria the Department of Commerce should give priority to industries which will result in the greatest employment benefits for the United States, industries which have the most export potential and industries that promote critical technologies.

The legislation doesn't specify what objective criteria should be used. It simply endorses a results-oriented trade policy. The effect will not be "managed trade". Rather, it will provide the basis for our negotiators and our trading partners to know what "success" is. It seeks to create a basis for open, honest negotiations where others understand what our expectations are.

The legislation also gives the President the ability to come to Congress to authorize reciprocal trade actions if he deems it appropriate. This reciprocal trade authority would be considered on an expedited basis.

The President has full discretion under this legislation. But it sends a clear message to our trading partners: follow the Golden Rule in trade. If another country believes that its market access impediments are appropriate and should be continued, then they shouldn't object to others following their lead.

Nothing in this legislation violates our commitment to the GATT. The process that the bill begins simply requires that we define what our national interests and what fair play would achieve. It does not specify how we will respond to the market barriers our farmers, workers and businesses face, although, through the expedited procedures provided for in the bill, it shows a clear preference for reciprocity. Reciprocity to respond to anticompetitive practices. Actions that aren't covered by the GATT.

Those with a vested interest in the status quo have engaged in an intensive public relations campaign to discredit the President's trade policy. We must not retreat from our desire to enforce the rights of our farmers, workers and businesses.●

U.S. COMMISSION ON CIVIL RIGHTS' REPORT ON HATE CRIME IN OHIO

● Mr. SIMON. Mr. President, the Ohio Advisory Committee to the U.S. Commission on Civil Rights has released a report documenting hate activity in that State. The Ohio Advisory Committee compiled hate crime statistics from the five largest cities in the State, and found continuing reports of prejudice and hate ranging from racism, anti-Semitism, and homophobia. Unfortunately, Ohio's continued problem with hate crimes mirrors the national struggle against crimes based on prejudice.

The Ohio report serves as a reminder that there is still much work to be done to reduce the incidence of hate crimes. The Hate Crimes Statistics Act, which I authored in 1990, has been an important first step in this process. The reporting system established by this law sends a message to both the victims and the perpetrators of hate crimes that law enforcement officials are committed to solving the problem of hate crimes.

Unfortunately, since States are not required to provide statistics on hate crimes to the FBI, many States have not yet fully complied with this important effort. In this, Ohio again mirrors the problems in many States. The Ohio Advisory Committee found that the reporting of hate crime by local law enforcement agencies is still insufficient to gauge with confidence the extent of hate crime activity in Ohio. Ohio has seen significant progress since 1991 when only 30 of 401—7 percent—law enforcement agencies who participate in the program submitted hate crime reports to the FBI. That number increased to 125 of 401—31 percent—law enforcement agencies reporting in 1993. This progress is encouraging, but a greater commitment is needed.

In addition to the problems with insufficient reporting, the report found that Ohio's reporting was plagued by wide discrepancies in interpretation of the hate crime statute. This has been a problem in many States, and highlights the importance of the FBI hate crime training programs. The FBI offers outreach and training programs for local law enforcement officials to ensure that hate crime reporting is consistent and in keeping with the statute. I encourage Ohio law enforcement officials to take advantage of this useful training.

The Ohio report made several recommendations to improve Ohio's hate crime reporting, from encouraging local law enforcement officials to avail themselves of the hate crime training offered by the FBI to the creation of a central depository of hate crime information in Ohio. These changes would not only boost efforts to monitor hate crimes, but facilitate more effective remedies and prosecutions of hate crimes in the State. I encourage Ohio officials to review these recommendations.

The foundation laid by the 1990 Hate Crimes Statistics Act is an important step in solving the problem of hate crimes. But clearly this problem is not going away. The problems in Ohio are not unique. Government officials, from local to Federal, need to look for ways to assist States and cities interested in training their law enforcement officials to report hate crimes, and to encourage all States to participate.●

IMMIGRATION ENFORCEMENT IMPROVEMENTS ACT OF 1995

● Mr. SIMON. Mr. President, I am proud to be an original cosponsor of the Immigration Enforcement Improvements Act of 1995. The approach to immigration policy reflected in the administration's proposal is thoughtful and comprehensive, and I applaud it.

The Clinton administration's bill recognizes, as do the people of this Nation, the need to formulate an effective response to the problem of illegal immigration, and proposes increased resources not only for border enforcement, but also increased resources to eliminate the job magnet that will continue to draw undocumented aliens into the Nation regardless of the success of our border policy. The proposal also strives to improve our ability to deport those aliens that have been identified as deportable.

To achieve each of these objectives the administration has proposed stern measures, and, in its fiscal year 1996 budget request, the commitment of substantial resources; yet, at the same time, the administration's proposal contains little that feeds the rampant anti-immigrant sentiment that has pervaded the immigration policy debate in recent years. Rather, the administration's proposal takes a measured yet aggressive approach to the problems we must face. In short, while it has taken an undeniably firm stance against illegal immigration, the administration has not succumbed to the belief that immigration in all its shapes and forms is a bad thing. Quite the contrary: this legislation reflects the fact that, as the President has said, an effective immigration policy must combine deterrence of illegal immigration with an encouragement and celebration of legal immigration.

I look forward to working with the administration and my colleagues in the Senate to effect this delicate balance, and to implement an immigration policy that is both tough and fair. The administration's proposal is a great step in this direction.●

TRIBUTE TO DR. RAY STOWERS

● Mr. NICKLES. Mr. President, I rise today to congratulate a fellow Oklahoman, Ray Stowers, D.O. on his recent appointment to the Physicians Payment Review Commission [PPRC].

Dr. Stowers is an osteopathic, family practice physician from Medford, OK. Since his first year in practice, Dr. Stowers has remained dedicated to the advancement of rural family medical practice, evidenced by his service as a faculty member of the Oklahoma State University College of Osteopathic Medicine. During this time, Dr. Stowers maintained his office at the rural site for the Enid Memorial Hospital providing exceptional health care for the individuals in that community.

One of Dr. Stowers' many successes occurred when he was appointed by the Governor of Oklahoma to serve on the board of the Task Force on Rural Health Care issues which was responsible for advising the Governor on the State's health care manpower needs, and for convening a statewide conference to discuss rural health care delivery issues.

Dr. Stowers is also an expert in physician payment issues. Since 1992, he has served on the American Medical Association's Relative Value Update Committee [RUC]. As the first osteopathic physician appointed to serve on this committee, Ray has facilitated greater understanding, collaboration, and teamwork between the osteopathic medical profession and the allopathic physician community, and has lent his considerable expertise on physician practices to the RUC proceedings. Since 1994, he has also served as the osteopathic profession's liaison to the American Academy of Physicians regarding reimbursement, certification, legislation, and managed care options.

Since PPRC was established by Congress in 1986, an osteopathic physician

has never served on the Commission. Dr. Stowers' appointment makes him the first osteopathic physician to serve on the Commission and the medical profession could not have put forth a finer candidate. Dr. Stowers represents what is best about medicine and physicians in America today. During the time when the trend to become a specialized physician is so strong and promises such great rewards, he has remained dedicated to the path of providing solo, rural family medicine for over 21 years.

Dr. Stowers has served his family, his profession, his community, and his State of Oklahoma well. The entire country will now benefit from the same service of compassion and integrity. Dr. Stowers, the State of Oklahoma is proud of your accomplishments. I am honored to join your family, friends, and colleagues in wishing you every success as you embark on your next challenge of serving on the Physician Payment Review Commission.●

ARSON AWARENESS WEEK

● Mr. ROTH. Mr. President, this is Arson Awareness Week. In the time it will take me to finish my first sentence, arson fires will destroy at least $600 worth of property in this country. That is an annual cost of more than $2 billion. And while in recent years arson has accounted for just over 15 percent of building fires, it has accounted for more than 30 percent of the dollar loss.

This, Mr. President, is a problem we all pay for. We pay for it in higher property insurance premiums and in higher taxes.

Analysis of 1987 to 1991 fires by the National Fire Protection Association found that residential arson averaged a cost of $14,000 per fire. Fires set in stores, offices, and restaurants averaged a cost of $30,000 per fire. And arson fires in manufacturing sites averaged more than $65,000.

Beyond the obvious economic costs associated with homes and businesses lost to arson, there is a severe social consequence. In many cases the remnants from acts of arson end up as hangouts and havens for drug dealers, prostitutes, and other criminal elements. Put simply, arson breeds crime in more ways than one, contributing to fear and frustration, especially in our Nation's cities.

Finally—and more importantly—we pay for the heinous crime of arson in a way that cannot be measured—a loss that is beyond monetary considerations. This, of course, is the loss of life. Every year, Mr. President, more than 700 people—men, women, and children—die in arson fires. Beyond the deaths, there are the tortured survivors, people who often end up physically or emotionally scarred.

National Arson Awareness Week sponsored by the International Association of Arson Investigators begins the week of May 1. It serves to remind us of one of the more notorious and unfortunate chapters in recent American history, the series of devastating fires set over 3 days in Los Angeles in 1992. May 1 is the anniversary of the day those fires ended. It is my sincere hope that by focusing on the tragedy that is always, in one way, associated with arson, we can minimize, and even bring an end to this horrible crime.

As we focus attention on arson, we will better understand who sets fires and under what circumstances. Based on arson arrests, juveniles set approximately half of arson fires, usually as a way to commit vandalism. However, my definition of juveniles is broader than just teenagers. Of those arrested, 6 percent are under 10 years old.

However, it is the adult arsonists who are the most sophisticated and who cause the greater amount of destruction. Revenge often serves as a motive for their arson. In 1990, in New York City, a man who was angry with his girlfriend, set fire to the restaurant where she worked. The end result was the death of 87 people turning his hateful act into the second-deadliest fire of the past 30 years.

What is being done to reduce the threat of arson? Many things.

Insurance companies report information on suspicious fires to the Property Insurance Loss Register, a national database, which police and fire officials use to investigate fires and prosecute arsonists. While this is not a recent development, increased use will pay bigger dividends as the amount of information in the database grows.

Also, firefighters have long received training in arson detection. Some even specialize in the field. They are highly trained and skilled in determining a fire's origin.

Recently, dogs have also assumed a new role, the role of a fire investigator's best friend. These specially trained dogs are sometimes able to sniff out what started a fire, such as gasoline, when human investigators cannot.

I am encouraged by the progress and the dedicated men and women who dedicate themselves to our safety. Arson Awareness Week is one way we can demonstrate our gratitude and encourage the rest of America to join us in fighting this destructive and pointless crime.●

DEMOCRACY IN TANZANIA

● Mr. SIMON. Mr. President, I speak to you today about an African country that could, this year, take another major step on the path toward democracy.

The Republic of Tanzania was formed in 1964 through the merger of two independent States: the East African State, Tanganyika, and the independent island, Zanzibar. From 1965 until his retirement in 1985, President Julius Nyere, one of the greatest of African statesman, headed the Tanzanian Government.

For most of its history, the Republic of Tanzania has had a single party political system. In 1985, President Nyere was succeeded by their current leader, President Ali Hassan Mwinyi in a single party election. President Mwinyi won that election with no opposition and 96 percent of the vote. In 1990, President Mwinyi was again the sole candidate in the Presidential elections. Again, he won with 95.5 percent of the votes.

In 1992, Tanzania formally adopted constitutional amendments providing for a multiparty system. This constitutional change was not forced on the Government by a popular uprising. Instead, it was recommended by a Presidential commission and adopted by the ruling party, the Chama Cha Mapinduzi [CCM] party. I commend President Mwinyi for his leadership in moving Tanzania a step forward on the road to greater democracy and freedom.

Since mid-1992, numerous opposition parties have been registered in Tanzania and multiparty elections have been held at local and the parliamentary by election levels. Yet, as of the results available at the end of 1994, new political parties won only 7 percent of the seats in contested elections. Half of the elections were uncontested. While the Constitution recognizes a multi-party system, the electoral policies and practices of Tanzania continue to support a single-party government.

Clearly, a decision to hold multiparty elections does not mean that democracy, political rights and civil liberties have been fully embraced. Freedom House, a highly respected nonprofit organization that monitors political rights and civil liberties worldwide, rates Tanzania as not free. Likewise the Carter Center describes Tanzania as being moderately democratic, reflecting that while the Government of Tanzania makes formal commitments to a democratic transition, their deeds are not yet commensurate with their pledges.

In October 1995, Tanzania will hold its first national multiparty election. This could be, given transparent and unbiased election practices, a major achievement in the political life of Tanzania. But now is the time for the Government of Tanzania to match the rhetoric of democracy with the tangible actions needed for real democracy to blossom and flourish.

Constitutional adoption of multiparty elections has provided an opportunity for greater democracy. Freedom of the press, equal access to the public media—particularly the national radio—for all political parties, and a politically independent election commission will move democracy closer to

a reality. Tanzania has made some progress in recent months. It can make significantly more in the months ahead. I encourage Tanzania's leaders to move forward to provide a level playing field for all political parties for their upcoming national elections.●

ORDERS FOR FRIDAY, MAY 5, 1995

Mr. DOLE. Mr. President, my understanding is that this request has been cleared with the Democratic leader, Senator DASCHLE.

I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. on Friday, May 5; that, following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in day; and, that there then be a period for the transaction of morning business not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for up to 5 minutes each, except for the following: Senator DORGAN for 20 minutes.

I further ask unanimous consent that at the hour of 11 a.m. the Senate resume consideration of H.R. 956, the product liability bill.

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

PROGRAM

Mr. DOLE. For the information of all Senators, shortly after the Senate resumes consideration of the product liability bill on Friday, I hope to be able to lay down a new substitute amendment for discussion for the remainder of Friday's session. A cloture motion will be filed on the substitute, and I hope we can reach an agreement for that cloture vote to occur at approximately 1:30 on Monday.

ORDER FOR RECESS UNTIL TOMORROW

Mr. DOLE. 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 following the remarks of Senator SPECTER, who I understand is on the way to the floor.

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

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

The PRESIDING OFFICER. The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE VOTE TO OCCUR AT 4 P.M. ON MONDAY, MAY 8, 1995

Mr. LOTT. Mr. President, at the direction of the majority leader, in consultation with the minority, I would like to make one change in the leader's earlier announcement.

A cloture motion will be filed on the substitute, and the cloture vote will occur at approximately 4 p.m. on Monday, instead of 11:30. This is to accommodate the maximum number of Members for that vote.

Under the prior arrangement, I believe Senator SPECTER will be recognized at this point for his remarks.

I yield the floor, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRODUCT LIABILITY BILL

Mr. SPECTER. Mr. President, I have sought recognition to make a few comments on the pending product liability bill and the cloture votes which were taken today; that is, the vote to close off debate so that there could be a vote on the bill ultimately on final passage, with the rules of our body having unlimited debate and the rules of our Senate requiring there be 60 Senators join on what is called cloture to close off debate, and we had two such votes today. One was 46 in favor, 53 against. The second was 47 in favor and 52 against. So it is obvious on the current State of the record, the Senate is long away from having 60 votes to close off debate and move to a final decision on product liability.

I think that when there are significant, really major, really fundamental changes to a system as profoundly important as the legal system in the United States, that it is a matter that requires very, very careful deliberation, and it is appropriate for the cloture route to be followed and for 60 votes to be required to pass legislation of this importance, of this far-reaching nature.

Mr. President, I have stated on the floor of the Senate on a number of occasions that I believe that reforms are warranted on product liability, but I think they have to be very, very carefully crafted. I believe that after experience representing both plaintiffs and defendants in litigation and having had substantial experience in products liability litigation.

The matter came up in the last Congress, and I voted for cloture at that time in the hopes that we could get a carefully crafted bill. I think that it is appropriate to have a bill which would provide for alternative dispute resolution, as is provided in the current legislation, to adopt the collateral source rule which is contested. But it provides that if an individual has bought insurance and has collected on his or her own insurance policy, then that individual cannot collect again in a lawsuit. The plaintiffs and the individuals and the consumers objected to collateral source rule on the ground that the individual has paid for it so that whatever benefit is received from the insurance policy ought not to be discounted for the defendant. But I think that on balance, given all the factors, that it is appropriate to limit that aspect of a plaintiff's recovery.

I believe that it is worthwhile to have a tightening of the rules on frivolous lawsuits, and perhaps the frivolous lawsuit is really at the core of the litigation problem in America today, lawsuits which are brought without any real merit or without any real foundation.

I think that if we could set the rules to discourage, to eliminate frivolous lawsuits, we would have really solved most of the problem that is present in the litigation system today, to stop lawsuits which are being brought where they do not have a real basis in fact and in law, where they are brought really to coerce settlements but not because the plaintiff has a real case.

The distinguished Senator from Colorado, Senator BROWN, offered an amendment to tighten up the rules on frivolous lawsuits, and I supported that amendment.

I think that there are things that can be done within the course of the pending legislation which would strengthen the hand of the defendants, such as the amendment offered by the distinguished Senator from Arizona, Senator KYL, who wanted to have the same limitations on defendants as on plaintiffs on the alternative dispute resolution issue. He wanted to leave it up to the States, many of which have provisions on alternative dispute resolution—that is a fancy name for arbitration—where if a plaintiff failed to be reasonable, there could be sanctions on the plaintiff just as under the pending legislation. If the defendant is not reasonable, there can be sanctions on the defendant.

I think that the distinguished Senator from Tennessee, Senator THOMPSON, offered a very important amendment to limit product liability to Federal cases. That is in accordance with the principle that we ought to allow States to make determinations and to have government closest to the people, a matter related to an issue which has been handled by, promoted by the distinguished Senator from Idaho, who now presides in the chair, Senator KEMPTHORNE. He has been here only 2

years and 4 months, if my mathematics are correct, and championed legislation to eliminate Federal mandates, having been the mayor of Boise, ID, and having seen the imposition of mandates coming from the Federal Government—may the RECORD show the distinguished Presiding Officer is nodding in the affirmative—really wanting to have government closest to the people, letting the mayors and State governments decide these issues so that when Senator THOMPSON offered the amendment, that it really ought to be a matter of federalism, and that is something which is very heavily emphasized in the Contract With America. I think that made good sense.

When it comes to a few of the fundamental issues, Mr. President, I have grave reluctance to make very fundamental changes in the present system. One of those areas is on the matter of punitive damages. I do not think that we have really come to grips with the question of punitive damages in our debate.

Punitive damages are set up as a form of punishment as the word "punitive" says, when there is some egregious, willful, wanton misconduct on the part of the defendant which really has to be controlled in a civil contest. And a number of the cases that I brought to the floor to illustrate what this really means, where you have a matter like the notorious Pinto case, where the gas tank was in the rear of the car and exploded. As I recollect the figures, it would cost $11 apiece to modify that dangerous gas tank. Ford Motor Co. made a calculated decision, figuring out how many personal injury cases there would be, how many death cases and injury cases there would be, where the motorists and the passengers would burn up, and figured it out that it made dollars and cents, economic value to them, to pay the cost of litigation as opposed to correcting the car.

On the Cutter blood case where it was shown that the defendant had knowledge that blood was being transmitted which contained AIDS, they made a calculation as to what it would cost to cure it and decided not to issue the warning and to have the blood circulated. That came to light, as in the Pinto case, by going into the records of the defendant and finding that out. Or the IUD case, where women were subjected to the IUD which caused infections, sterilization, and tremendous damages, although well known to the defendant company that that was a problem. Or the flammable pajama case. Because there had not been any standard set by the Federal Government, the manufacturer put out pajamas that they knew would become flammable, that is burn up, with very little provocation. Some of the cases put into the RECORD—one specifically that I recollect involved a case where the conduct of the defendant corporation was so aggravated that criminal charges were brought—really, where you have a willful and malicious disregard for human life that constitutes malice and is sufficient to have a criminal prosecution for murder in the second degree.

Some of the cases by big corporations, by big companies, on the cost benefit analysis as to what it would cost to leave the damaged product go on, those are present in many cases. They have been put into the RECORD. That is why it seems to me, Mr. President, that we really ought not to be making fundamental changes which would give a green light and a license to disregard the interests of the consumer. What we are really talking about is the interest of the consumer here, the interest of the general public in trying to weigh what is fair in terms of handling the issues of defendant companies.

I am very concerned about American productivity and especially about the ability of small business to function. I am concerned about some who say, well, the claim is so large and the damages are so enormous, potentially, even though there is no merit, that we would be betting the business if we went to trial and therefore really intimidated and intimidated into a settlement.

I filed an amendment which would limit recovery on punitive damages to 10 percent of the value of the company. I filed that amendment and I offered that as an alternative possibility, with some trepidation, frankly, because of a concern I have that if you limit punitive damages, it may be an incentive for somebody to be wantonly disregarding of the safety of others. It may be that the punitive damage issue could be further contained by analogy to the libel cases where, after a libel verdict is entered under a very tough standard of malice—New York Times versus Sullivan, Supreme Court of the United States. On appellate review, there is a de novo review, the Latin word which means a full review. It is not a matter limited to a decision on whether there is sufficient evidence to support the verdict of the jury.

Customarily, in litigation, when the jury enters a verdict and there is an appeal taken, the appellate court, the reviewing court, will look to see if there is sufficient evidence to support the verdict of the jury. But in libel cases because of the interest in freedom of speech and the interest of limiting the liability of the media—newspapers, radio, television—there is a different standard. The standard is applied that the reviewing court will look at it fresh to decide if there is sufficient evidence so that we will have a check on the jury system if they are capricious or arbitrary or really out of line.

Mr. President, I have expressed the same concern on changing the law on joint liability. And bear in mind that as the cases are built up on punitive damages or joint liability, they are built up by courts which have a very deliberate process, much more thoughtful process than the legislative process. When we have hearings, it is well known, frequently only one or two Senators are present. When we mark up the bill—that is, write it up—it is not really the essence of understanding of all of the provisions. On the issue of punitive damages, there are learned opinions by Justice Scalia, a known conservative writing on punitive damages, from the constitutional perspective, saying there is a constitutional basis for punitive damages and rejecting the claim that punitive damages ought to be overturned. That is in the context of whether there is a constitutional basis for it as opposed to a public policy determination, which would be up to the Congress.

But those kinds of issues are considered and considered very carefully by the courts. I think, fairly stated, having been a party to the judicial process and legislative process, I say unequivocally the analysis given in the court is much more intricate and more thorough than we are able to do in the legislative process. But there are points where we ought to legislate. When the issue of joint liability comes up, I have been reluctant to disturb that.

One of the cases which comes to my mind is the case involving the fatality of our distinguished and learned colleague, the late John Heinz, who was killed in April 1991 in a plane crash when he was riding in a charter plane and there was a noted problem with the landing gear, and they went by the airport and came away, and a helicopter owned by the Sun Oil Co. came by trying to observe, and there was a crash. The planes fell into a crowded school yard in suburban Philadelphia. There were terrible injuries. If we had made changes in joint liability in that case, the children, some of whom were killed, and some of whom were badly burned, would not be able to recover fully.

So when you have a case where there is joint liability and the issue is raised, why should a party who is only 50 percent liable pay the whole thing when the other party is insolvent, or under the current law has the full responsibility? The law has been established in that effect because joint liability is composed when there is substantial negligent conduct by the party which causes the injuries. If you have to balance the injustice of having one party only partially liable pay the full damages, where others are insolvent, it turns on who is going to bear the loss, the injured plaintiff, who is not at fault, as the children were not at fault in the air collision which took the life of Senator Heinz and others on the ground, and very serious burn injuries.

I filed an amendment at the desk which would seek to limit, to an extent, joint liability. You hear about the cases where somebody is liable only for 1 or 2 percent and the parties liable for 98 or 99 percent are insolvent and the party who is only peripherally involved has to pay the full verdict. It seems to me that perhaps something in the nature of 15 percent might be an appropriate cutoff. That joint liability would not attach if somebody were not liable beyond the extent of 15 percent.

Mr. President, I offer these observations about ways that product liability could be crafted so that we could get legislation out of the Senate, where we might have a different standard on punitive damages to accommodate different review by the appellate courts to eliminate the really outlandish, runaway, or arbitrary jury verdicts, or limit it to the percentage of the net worth of the company—10 percent as I have suggested—so that a company, especially a small company, is not, in effect, intimidated or blackmailed into a settlement, because they cannot get the whole company. Or ways where we might have a limitation on joint liability.

Mr. President, I have been in Congress, the Senate, since the 97th Congress, when we reported out a product liability bill from the Commerce Committee, Senator Kasten. It was a long time before the bill came to the floor after that.

Last year, as I say, I voted for cloture, thinking we might get a bill. I believe that we could get a bill which would take significant steps, most emphatically, on the issues of frivolous lawsuits. So that in opposing cloture—on a vote, we have only 46 Senators who voted for cloture, 53 against; on the second vote, 47 voted for cloture as against 52 against, a long way from the 60 votes.

I make these comments because I think that when we deal with the judicial system, it is not the plaintiff's trial bar which establishes these rules. These rules were established by the courts of the United States. As I say, I have been on both sides of the fence representing plaintiffs and defendants in personal injury cases.

I think where we have so many, many cases of outlandish conduct where big companies put products on the market on a calculation that they would rather pay for the deaths and the damages than to make the correction, if we take punitive damages away, it is not a wise thing for the Congress to do.

I do not think many of our colleagues understand that. After I talked about some of the cases, talked about the blood case with AIDS virus in it, being circulated by one of the big companies, and one of my colleagues said, "That is awful," and I made the comment about it. They had not heard. I do not think they really have reached all of our Members.

Usually, there is not more than one Senator present or two, one presiding, but the rule of this body is that these speeches are made and these presentations are made with not more than two or three or four Senators on the floor. Some are listening in their offices, but relatively few.

These are matters, I think, which yet have to be considered. It is my hope that we can craft legislation which will be curative on some of the issues, especially that of frivolous lawsuits, which I think is at the core of the problem in our courts today. I thank the Chair for staying late. I yield the floor.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 10 a.m. Friday, May 5, 1995.

Thereupon, the Senate, at 6:13 p.m., recessed until Friday, May 5, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate May 4, 1995:

THE JUDICIARY

ANDRE M. DAVIS, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE WALTER E. BLACK, JR., RETIRED.

CATHERINE C. BLAKE, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE JOHN M. HARGROVE, RETIRED.

RESOLUTION TRUST CORPORATION

HERBERT F. COLLINS, OF MASSACHUSETTS, TO BE A MEMBER OF THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD FOR A TERM OF 3 YEARS, VICE PHILIP C. JACKSON, JR., TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A) AND 3034:

VICE CHIEF OF STAFF OF THE ARMY

To be general

LT. GEN. RONALD H. GRIFFITH [redacted]

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

GEN. JOHN H. TILELLI, JR [redacted]

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. GEORGE A. FISHER, JR [redacted]

THE FOLLOWING U.S. ARMY NATIONAL GUARD OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF SECTIONS 3385, 3392, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. WOODROW D. BOYCE [redacted]
BRIG. GEN. ROBERT J. BRANDT [redacted]
BRIG. GEN. JOSEPH H. LANGLEY [redacted]
BRIG. GEN. JOHN B. RAMEY [redacted]

To be brigadier general

COL. JOHN D. LARSON [redacted]
COL. ROSETTA Y. BURKE [redacted]
COL. BURNEY H. ENZOR [redacted]
COL. FRANK P. BARAN [redacted]
COL. ROBERT M. BENSON [redacted]
COL. EDWARD L. CORREA, JR [redacted]
COL. WILLIAM R. LABRIE [redacted]
COL. NAMEN X. BARNES [redacted]
COL. RANDAL M. ROBINSON [redacted]
COL. PAUL D. MONROE, JR [redacted]
COL. LLOYD D. MCDANIEL, JR [redacted]
COL. STANLEY R. THOMPSON [redacted]
COL. HOLSEY A. MOORMAN [redacted]
COL. BRADLEY D. GAMBILL [redacted]
COL. HARVEY M. HAAKENSON [redacted]
COL. DAVID T. HARTLEY [redacted]
COL. DONALD F. HAWKINS [redacted]
COL. EARL L. DOYLE [redacted]
COL. DAVID M. WILSON [redacted]
COL. JAMES T. CARPER [redacted]
COL. WILLIAM T. THIELEMANN [redacted]
COL. FREDERIC J. RAYMOND [redacted]

THE FOLLOWING U.S. ARMY RESERVE OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF SECTIONS 3371, 3384, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. WILLIAM J. COLLINS, JR [redacted]
BRIG. GEN. JOE M. ERNST [redacted]
BRIG. GEN. STEVE L. REPICHOWSKI [redacted]
BRIG. GEN. JOSEPH A. SCHEINKOENIG [redacted]
BRIG. GEN. JAMES W. WARR [redacted]

To be brigadier general

COL. STEPHEN D. LIVINGSTON [redacted]
COL. JOSEPH L. THOMPSON III [redacted]
COL. ROGER L. BRAUTIGAM [redacted]
COL. JOHN G. TOWNSEND [redacted]
COL. MICHAEL L. BOZEMAN [redacted]
COL. WILLIAM B. RAINES, JR [redacted]
COL. JAMIE S. BARKIN [redacted]
COL. JOHN L. ANDERSON [redacted]

THE FOLLOWING U.S. ARMY RESERVE OFFICER FOR PROMOTION TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY, UNDER TITLE 10, U.S.C., SECTIONS 3384 AND 12203(A):

To be brigadier general

COL. JAMES R. HELMLY [redacted]