United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, MONDAY, APRIL 24, 1995 *No. 66*

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 1, 1995, at 12:30 p.m.

Senate

MONDAY, APRIL 24, 1995

The Senate met at 12 noon and was called to order by the President pro tempore.

PRAYER

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

Let us pray:

Almighty God, our hearts are at half-mast with grief over the catastrophic bombing of the Federal building in Oklahoma City. We mourn for the victims, especially the children, of this senseless crime and reach out with profound empathy to their families. We ask You to strengthen them as they endure incredible suffering. Graciously grant physical and emotional healing to those who survived. Most of all, comfort the children who ask ''why?'' and give wisdom to parents as they search for words to answer. We all need help in understanding an ignominious act of tyranny like this.

We only can imagine the agony of Your heart, Father. If our indignation burns white-hot, it must be small in comparison to Your judgment. You have given us freedom of will and made us responsible for the welfare of our neighbors. Our hearts break with Your heart over those who willfully cause suffering. Therefore, we boldly ask for Your divine intervention for the speedy capture and punishment of these traitors against our Nation and the sacredness of human life. As You have given us victory in just wars, now give us a strategy to defeat the illusive and dangerous forces of organized terrorism.

Lord God of this Senate, we are never more of one mind and heart than when dealing with a threat to our national security or in responding to a catastrophe in any one of our States. We rally in support of Senators NICKLES and INHOFE as they continue to care for their people.

We press on to the issues of this day with the strong inspiration of the 40 years of leadership of John Stennis in this Senate. May the memory of his faith in You and his courage in conflict give us determination to seek, as he did, to do our best. In the Lord's name. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

THE CHAPLAIN'S PRAYER

Mr. DOLE. Mr. President, I thank the Chaplain for his timely and comforting words.

TRAGEDY IN OKLAHOMA CITY

Mr. DOLE. Mr. President, on behalf of all the Senate, I extend my sympathies to Senator NICKLES, Senator INHOFE, Members of the House Oklahoma delegation, Gov. Frank Keating, and, through them, to all the citizens of Oklahoma for the loss they suffered last Wednesday.

Kansas and Oklahoma share a common border. And our citizens also share common values. Values like love of God. Love of family. Perseverance through tough times. And a commitment to help those in need. The citizens of Oklahoma displayed these values time and time again this past week, and in doing so, they inspired America and the world.

While all the people of Oklahoma deserve our admiration, the citizens of Oklahoma City are worthy of special praise. It is their friends and family members who were lost as a result of this brutal crime. But while many of Oklahoma City's buildings were shattered, its spirit has stood strong.

I am reminded of the words of the great World War II journalist Ernie Pyle, who once wrote, ''Oklahoma City is an especially friendly town. People there have a pride about their town * * * They just wouldn't live anywhere else.'' That pride has never left the people of Oklahoma City, and it will guide them during the difficult days ahead.

I salute the firemen, the paramedics, the rescue workers, and all those who have generously volunteered their time and their labor to the relief effort; the members of the Red Cross and the Salvation Army.

I commend President Clinton for the way he and his administration have responded to this tragedy. The criminal investigation has been thorough and swift, and the tone set by the President right on the mark: Those who have perpetrated this unspeakable evil are cowards. There is absolutely no justification, no excuse, for what took place last Wednesday in Oklahoma City. Killing innocent children and other defenseless citizens is the depraved act of depraved minds.

I also want to commend Attorney General Reno for publicly stating that

she will seek the death penalty. If ever there was a crime deserving of the ultimate sanction, this is it.

As the rebuilding process continues in Oklahoma City, we must also begin looking to the future. Although there is no such thing as absolute security in a free society, we have an obligation to do everything within our power to minimize the chances that other, similar tragedies will occur elsewhere in the United States.

Last week, I wrote to President Clinton to tell him that Senate Republicans stand ready to work with the administration to develop a comprehensive antiterrorism plan for America. Senate Republicans have sponsored a variety of antiterrorism proposals, ranging from the Alien Terrorist Removal Act, to increased penalties for certain terrorist-related activities, to proposals designed to give our law enforcement officials the tools they need, such as expanded wiretap authority.

I am also familiar with the administration's own antiterrorism package, as well as the ideas mentioned by the President last night on television. These ideas will be fully considered.

Republican staff have also been working closely with the FBI on a comprehensive antiterrorism initiative, and we are prepared to give this initiative the fast-track consideration it deserves.

Mr. President, during World War II, the great Senator Arthur Vandenberg often repeated his belief that ''partisanship stops at the water's edge.''

Terrorists—both foreign and domestic—should have no doubt that partisanship also stops at evil's edge—an edge those responsible for the Oklahoma City bombing have clearly stepped over. I know I speak for all Members of the Senate when I say that we stand with the people of Oklahoma, committed to doing all that is needed to protect America from the terrorist threat.

SCHEDULE

Mr. DOLE. Mr. President, following the leaders' time, there will be morning business until 1 o'clock, with Senators permitted to speak for up to 5 minutes each.

Shortly, Senator NICKLES will submit a Senate resolution regarding the bombing in Oklahoma City.

It is also my intention to begin consideration of H.R. 956, the Product Liability Act.

I am prepared to say there will be no rollcall votes today, but that will be up to the managers on the product liability bill. There will be a vote on the Nickles resolution, if agreeable, at noon tomorrow.

ORDER TO PROCEED TO H.R. 956

Mr. DOLE. Mr. President, this has been cleared by the Democratic leader.

I ask unanimous consent that at 1 o'clock today, the Senate proceed to H.R. 956, the product liability bill.

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

BILL READ THE FIRST TIME—H.R. 1380

Mr. DOLE. Mr. President, I inquire of the Chair if H.R. 1380 has arrived from the House of Representatives.

The PRESIDING OFFICER. The Senator will be advised it has arrived.

Mr. DOLE. I, therefore, ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The assistant legislative clerk read as follows:

A bill (H.R. 1380) to provide a moratorium on certain class action lawsuits relating to the Truth in Lending Act.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, I now ask for its second reading and, on behalf of the Democratic leader, I object.

The PRESIDING OFFICER. Objection is heard.

The bill will be read the second time on the next legislative day.

TRIBUTE TO JOHN STENNIS

Mr. DOLE. Mr. President, I will just take a moment to talk about our departed friend who served here for many, many years, Senator John Stennis. When he left the Senate in 1989, he had served in this Chamber for 41 years—nearly one-fifth of the Senate's history. And those of us privileged to serve with him knew that he was one of the true giants of that history.

Senator Stennis passed away yesterday at the age of 93, and I join all Senators in expressing our condolences on the death of our former colleague and in extending our sympathies to members of his family.

Senator Stennis and I came from different regions of the country, from different political parties, and we had different views on many issues. But no one could know or serve with John Stennis without admiring his character, his integrity, or his patriotism.

John Stennis loved the Senate and worked to make it a better place. He was the first chairman of the Senate Committee on Standards and Conduct and was the author of the Senate's first code of ethics.

John Stennis also loved America, and as chairman of the Armed Services Committee, he never wavered from his belief that America's national defense should be second to none.

John Stennis was also a man of remarkable courage. In his seventies, he was shot and left for dead by robbers outside his Washington home. And in his eighties, he lost a leg to cancer. On both occasions, he not only recovered, but he was also back at work long before anyone thought possible.

Those of us who were here at the time will always remember the days when Senator Stennis returned to the Chamber and the outpouring of respect and admiration that he received.

Mr. President, during his final years in this Chamber, Senator John Stennis was asked in an interview how he would like to be remembered, and he responded: ''You couldn't give me a finer compliment than just to say, 'He did his best.'''

Today, his family, friends, and former colleagues can take solace in the fact that he will be remembered exactly how he wished—as a man who always gave nothing less than his best.

Mr. President, if no other Senator is seeking recognition, 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. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RESERVATION OF LEADERSHIP TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The Senator from Oklahoma.

CONDEMNING ACTS OF VIOLENCE AND TERRORISM IN OKLAHOMA CITY

Mr. NICKLES. Mr. President, first, I wish to thank the majority leader for allowing us to consider a resolution condemning the acts of violence and terrorism that occurred in Oklahoma City last Wednesday.

Also, I want to thank the majority leader, Senator DOLE, for his support of this resolution and for his help in putting it together, as well as his personal friendship in calling me and offering whatever support he could do to assist the families and the victims of this terrible, violent and criminal act. Senator DOLE is not the only colleague who has offered his support. I have had several of my colleagues who have called to express their outrage over this violent act as well as their concern for those affected.

I appreciate the fact that President Clinton called me early on and expressed his support for whatever could

be done to assist the victims of this terrible tragedy. He stated that in his speech to Oklahoma City at the prayer service that we had yesterday. I appreciate the President doing that, as well as the Reverend Billy Graham who also participated in the service.

It was a time for coming together. We had over 20,000 people in the State of Oklahoma—many people came from outside the State as well—who wished to express their sympathies and condolences to the families, to the victims, but also their outrage at such a violent and terrible tragedy.

This is the deadliest terrorist attack on our Nation's soil in our history. The death toll continues to climb. The latest figures I heard were 81 that are confirmed dead, 150 still missing and now presumed dead, and over 400 injured.

I visited some of those injured people. I visited Children's Hospital and saw some of the children who were very significantly maimed. Hopefully and prayerfully they will recover and recover fully.

Mr. President, this becomes very, very personal when you tie it down to families. When you talk to a couple and they lost both children, it becomes very, very personal. Or when you talk to a couple and they lost their daughter, it becomes very personal. Or when you talk to an individual and they see their daughter or their son maimed almost beyond recognition, it becomes very, very personal. And it certainly almost takes adjectives to where they are not significant because you can use the word ''terrible'' and you can use the word ''outrage,'' but they really do not describe the horror that happened in Oklahoma City to some individuals.

So, Mr. President, shortly we will be submitting a resolution condemning this act of violence, condemning it in the strongest manner possible, and also expressing our support and our sympathies and our prayers for the families of the victims of this terrible crime.

Mr. President, maybe one of the blessings that might help us overcome this very difficult tragedy is the outpouring of love and support that we have seen from thousands and thousands of people, not only in Oklahoma but all across the country. I have had individuals call me and offer support—dollars, prayers and comfort—for those families. We have seen gifts that are very large and gifts that are very small but very, very precious. We have seen children donate their lunch money. We have seen individuals and corporations donate a million dollars. We have had people say, ''I'll do anything I can do to assist the families.''

It does make you feel good, and it is so striking to think that out of such a tragedy you can see so much generosity, so much love, so much sympathy invoked by Oklahomans and by Americans everywhere. It does make you feel good. Reverend Graham, in his comments yesterday to not only the families but really to the American people, when he called for a time of healing, was exactly right. Mr. President, I want to compliment not only Reverend Graham but also Governor Keating and Cathy Keating for their outstanding leadership at this time of crisis.

I want to compliment the organizations who have done such a responsive, outstanding job in helping to assist those people who really needed help. The volunteers that have come together—I am talking about the firefighters and the policemen, the Red Cross volunteers, the people to assist people who are hungry—have just been phenomenal.

I was in Dallas when I heard this fateful news and caught the first plane I could back and was sitting next to three firefighters who were flying up from Dallas on their own time on their own money to assist the victims. My guess is they are still there crawling through the rubble. And this is extremely difficult.

It is estimated something like 150 people are still trapped in that building, in all likelihood deceased. There is very little hope of survival at this late point, and yet you have volunteers coming from I do not know how many different cities who are crawling over the rubble and, in some cases, doing it by hand to recover those victims.

I have had the pleasure of meeting some—not all. But I just want to say thank you to them because they not only work 10 hours a day or 12 hours a day, they are working 24 hours a day. They are working all night long. They are working in the rain. They are working in the wind. They are working in the cold. We just want to say thank you.

It has really been a blessing to see the outpouring of love from so many people, not only the rescue workers, but so many other people throughout this country, and for that we are very, very grateful. All Oklahomans say thank you for, indeed, the generosity and the love we have seen in the last few days.

Mr. President, we condemn this act of violence, this act of terrorism in the strongest possible language, and that is what this resolution will do.

That is what it states. We compliment the President for taking his swift action to lend the law enforcement personnel, and they have responded with a great deal of expertise and professionalism—to date, with some real success—although, there is still a lot of work to be done. So my compliments to the FBI, to the Drug Enforcement Agency, to the Bureau of Alcohol, Tobacco and Firearms, the Oklahoma Highway Patrol, and the city police, because they have worked together. This has probably been one of the largest and best coordinated efforts both on the rescue side and also on the efforts to apprehend those people who were responsible for this terrorist act. I compliment all the Federal, State, and local officials for putting this effort together.

Mr. President, there is still a lot of work to be done. Unfortunately, there are still a lot of bodies to be recovered. There are buildings to be repaired. There is a lot of damage, a lot of damage, not just in one building. I might mention there are several buildings that have significant damage and, unfortunately, there were people that worked in other buildings that also lost their lives or were severely injured.

So, Mr. President, I pray for those victims and for the families of the victims. This resolution states that we support them, that we are going to do everything within our power to help them, that we are going to do everything within our power to apprehend those people who are responsible and that they should be punished to the maximum extent of the law.

As the President, Attorney General and Senator DOLE stated, they also should pay the maximum price. The death penalty is warranted in this case, and this resolution states that as well.

I appreciate the majority leader's willingness to let us bring this up at the first possible moment. I appreciate the fact that he is willing to let the Senate vote tomorrow at 12 o'clock on this. I appreciate the support of our colleagues.

This resolution also says that the Senate should act as expeditiously as possible in enacting antiterrorism measures, both domestic and the international. I know Senator HATCH has scheduled hearings later this week on this subject. I hope the Senate and House will concur and pass that legislation as soon as possible.

I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I thank my colleagues from Oklahoma, Senator NICKLES and Senator INHOFE. I know they have been under a great deal of stress. They have performed outstanding service for their constituents. All of us in this Chamber appreciate that very much.

We do have permission to go to the liability bill at 1 o'clock. I indicated earlier there would be no votes before 3. I am now advised that there are a great number of Senators who are not here. Because of that, I will say that there will be no votes today.

I urge my colleagues that we have to catch up with the House. We are not going to be able to do that if we come back after a 2-week vacation and only half of us show up. It is pretty hard to have much meaningful happen. This time, OK; next time we will have votes. I want to give everybody advance notice on both sides of the aisle that when we say no votes before 3, it means probably votes after 3. But, also, there might be an amendment that might take the rest of the day. I do not like to have Sergeant at Arms votes to see who is in town and who is not at town. I know many of my colleagues are at work wherever they may be. We need

to finish this bill as quickly as we can and move on to either telecommunications, or maybe because of the urgency, the antiterrorism bill will be ready by next week. I think we can move very quickly on that.

Mr. President, I yield the floor.

Mr. THURMOND addressed the Chair.

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

THE DEATH OF FORMER SENATOR JOHN STENNIS

Mr. THURMOND. Mr. President, we in the Senate were shocked to hear the news of the passing of a cherished friend and a former colleague: former Senator John Stennis from Mississippi.

Senator Stennis served in this Senate Chamber for 40 years—from the time of his election to the Senate in 1947, through his retirement in 1989. During that time, he dedicated himself to giving our Nation the gift of wisdom and leadership.

Senator Stennis was greatly admired by all who had the honor to serve with him. As chairman of the Armed Services Committee, he served with several Presidents; during that time he led the committee through the darkest days of the Vietnam war. Although he often saw his position on that war opposed by some of his fellow Democrats, he always did what he believed to be correct and in the best interest of our Nation.

For many years, Senator Stennis and I were neighbors in the Russell Building. I recall with great fondness the kindness and good cheer he showed to me and my office staff on the many occasions he stopped in to say hello. Senator Stennis completed his Senate career by serving with great distinction as President pro tempore of the Senate.

I had the honor of serving with Senator John Stennis for almost my entire Senate career. Throughout the years, I came to appreciate and respect his qualities of integrity, ability, and dedication.

Mr. President, John C. Stennis was a great American. He was a dedicated Senator who proudly represented the people of Mississippi with great distinction. We have lost a colleague, we have lost a leader; but most of all, we have lost a friend.

THE OKLAHOMA CITY BOMBING

Mr. THURMOND. Mr. President, last week, when most of us were home visiting our constituents, our two colleagues from Oklahoma faced a terrible disaster in their State. A 4,000-pound bomb detonated outside the Murrah Federal Office Building in Oklahoma City, not only destroying that structure and killing dozens of innocent men, women, and children, but taking a tremendous toll on the psyche of all Americans as well.

For years the United States has largely been spared the indignity of terrorist acts within its borders, but all that seems to have changed recently. In the last 2 years, we have suffered two deadly bombing attacks in the United States, one in New York City and last week's in Oklahoma City. While the images of injured and shocked people stumbling through the streets of Manhattan were disturbing, there was perhaps no sight as unsettling as seeking the near lifeless body of a young baby that was caught in last week's blast being passed from a police officer to a firefighter. Tragically, the child died and with it died a piece of our innocence. For the bomb that destroyed that building was not built by the hands of cold-hearted, calculating, and well financed foreign terrorists. Quite the contrary, the man who authorities believe is responsible for the bombing is a young American.

How, we all wonder, could an American do this to his fellow citizens? While we despise those responsible for bombing the World Trade Center, the attack in Oklahoma City, America's Heartland, seems so much more disturbing. When we think of terrorist actions against the United States, we think only those outside our borders would wish to do us harm. It is inconceivable to us that a fellow countryman would possess a hatred so deep and inflamed that he would be motivated to act against our Nation. How could one American commit an act that equates with premeditated, mass murder against other Americans? There is no answer and perhaps that is what is so disturbing to us.

The events of the last several days have happened at a breakneck pace and it is sometimes hard to maintain a focus and perspective on just what has occurred. We must remember, that as of this morning, 78 people, many of them Government servants, too many of them children, lost their lives for no logical or explicable reason. That thanks to tireless efforts of hundreds of Federal, State, and local law enforcement officials, suspects in this crime were quickly identified and are being rapidly brought to justice.

We discovered that there is a whole subculture of people who are fearful of their lawfully elected representatives. Some of these people believe that the Government is involved in the conspiracy to go to war against the citizens of the United States, and that they must protect themselves from their own Government.

While we truly do live in a world that is filled with dangerous people, it is also a world where the good outnumber the bad. Volunteers and relief supplies continue to pour into Oklahoma City, and people throughout the United States have banded together in shows of faith and sympathy for those who died or lost loved ones.

Most of all, we were reminded that America is still a very unique place, and it is a shame we must literally fear one of our neighbors might wish to destroy what is so special to all.

Mr. President, I yield the floor.

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

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

CONDEMNATION OF THE BOMBING IN OKLAHOMA CITY

Mr. NICKLES. Mr. President, I send a resolution to the desk, and I ask unanimous consent that it be considered at this time.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 110) expressing the sense of the Senate condemning the bombing in Oklahoma City.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. NICKLES. Mr. President, this resolution is one that I referred to earlier in my comments, cosponsored by Senator INHOFE and myself, Senator DOLE, and many other Senators.

We are going to hotline this and ask Senators if they wish to cosponsor it. I very much appreciate the cooperation of the majority leader in allowing us to bring up this resolution. The majority leader has already mentioned his intentions that we vote on the resolution at 12 o'clock tomorrow.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NATION'S RESPONSE TO THE OKLAHOMA BOMBING

Mr. HATCH. Mr. President, I appreciate my colleague's kindness in this matter. I just have a few words to say here this morning following the Oklahoma bombing.

Today, we all continue to mourn the senseless loss of life in Oklahoma City. My heart and my prayers go out to the families and loved ones of those killed and injured in this tragic bombing. This vicious destruction of human life, particularly of the lives of so many innocent children, is tragic beyond belief.

We must not rest until all of the perpetrators are discovered and punished. I have full confidence in the ability of Federal law enforcement officials to bring the perpetrators to justice. The

Judiciary Committee will support the President, the Attorney General, Director Freeh, and the hundreds of law enforcement officials involved in this effort. We will provide them with any assistance, legislative or otherwise, that they may need in that regard. I want to compliment each and every one of them, especially Director Freeh and the FBI, for their leadership in the work they have done in uncovering all the things they have, thus far.

President Clinton was correct when he described the terrorists who committed this act as ''evil cowards.'' If the barbaric individuals responsible for this venomous, wicked act believe they could intimidate, punish, or coerce the United States of America, they were wrong. Dead wrong. We must and we will guarantee that any terrorist, be he domestic or international, know that our Nation's policy will be one of swift and effective retribution.

For years, many in Congress have been fighting for passage of legislation aimed at enhancing our domestic and international counterterrorism efforts. I have been one of those. Much of this legislation is embodied in the Dole-Hatch crime bill that was introduced on the first day of this Congress. Recently, the administration forwarded to Congress its own counterterrorism bill that is similar to the Dole-Hatch proposal.

Since the tragic incident of last week, Senator DOLE and I have been working with Senators NICKLES and INHOFE on a comprehensive bill that will combine the better provisions from both the Dole-Hatch and administration bills into a single vehicle. Although this legislation is ready, we will delay its introduction until we can incorporate the additional provisions the President referred to last evening in his 60 Minutes interview. We will also hold hearings in the Judiciary Committee later this week to determine what can be done to fight terrorism.

The heinous attack on innocent men, women, and children underscores the need for tough, effective laws to fight the scourge of terrorism. We must ensure that Federal law enforcement officials have the tools to prevent and detect future terrorist attempts. Legislation is needed, and it is needed now, to give them those tools.

In addition to whatever recommendations the President may promulgate, our bill will certainly do the following:

It will increase the penalties for committing terrorist acts here in the United States;

Our legislation will add the crime of conspiracy to terrorism offenses, thus, permitting the Federal law enforcement agencies to stop terrorist organizations at their formation rather than waiting until after they have committed their terrorist acts;

Although the tragedy in Oklahoma appears to have been committed by individuals who are from the United States, it is important that we protect our citizens from foreign terrorists as well. Our bill will provide law enforcement and courts the tools they need to quickly remove alien terrorists from our midst without jeopardizing national security or the lives of law enforcement personnel;

Our legislation also seeks to prevent individuals who support or engage in terrorist activities from ever entering the United States. The bill would permit the Secretary of State to withhold visas from certain individuals who come from nations that sponsor terrorism, or from individuals who are members of organizations suspected of terrorist activities;

Our bill further includes provisions making it a crime to knowingly provide material support to groups designated by a Presidential finding to be engaged in terrorist activities;

Finally, our bill provides for numerous other needed improvements in the law to fight the scourge of terrorism. I would note that many of the provisions of this bill enjoy broad bipartisan support, and in several cases, have passed the Senate on previous occasions.

We must, however, resist the urge to leap to conclusions and unfairly tar certain political minorities with recriminations for last Wednesday's tragic events. As President Clinton said last evening, ''We must be careful not to stereotype people from other groups.'' Once all of the perpetrators of this act are apprehended, there will be time enough to ensure that justice is done.

As a final note, I want to commend President Clinton for his leadership that he has exhibited in the face of this tragedy. He and his administration have done a superb job in responding to this tragedy. The Department of Justice, the FBI, and all of the police and rescue workers in Oklahoma must be acknowledged for their efforts to date.

In closing, what is shocking to so many is the apparent fact that those responsible for this atrocity are U.S. citizens. To think that Americans could do this to one another, it is unbelievable.

Yet these killers are not true Americans, not in my book. Americans are the men, women, and children who died under the sea of concrete and steel. Americans are the rescue workers, the volunteers, the law enforcement officials and investigators who are clearing up the chaos that has occurred in Oklahoma City. The genuine Americans are the overwhelming number who will forever reel at the senselessness and horror of April 19, 1995. It falls on everyone as Americans in heart and spirit, to condemn this sort of political extremism. Anarchistic radicalism of this sort—be it from the left or the right—will not prevail in our freedom-loving democracy.

The rule of law and popular government will prevail. We intend by this legislation to see that it prevails, and that it prevails with the force that really should be behind the rule of law.

There are a lot of other things I will say about the bill we will file in the future, but suffice it to say these are some of the matters I wanted to cover in these few short remarks here.

Again, my lasting prayers, and that of my family, go out to those who have suffered so much through this ordeal, those who have suffered the loss of loved ones, those who have been maimed, and those who are related to those who have died or been maimed.

My love goes out to our Federal workers, too, for they are hard-working people who try to do the best they can. We want to make sure the Federal installations, as well as all other installations in this country, are secure from terrorism, terrorist activities, and from those who would subvert the very freedom fabric of our country.

Mr. President, I yield the floor.

AN UNSPEAKABLE TRAGEDY

Mr. DORGAN. Mr. President, let me join my colleague, Senator DOLE from Kansas, and my colleague, Senator NICKLES from Oklahoma, and others, I am sure, who will today speak of the nearly unspeakable tragedy that occurred in Oklahoma City.

It is very hard to even describe the horror that has been visited on so many families, so many innocent victims. My hope is that in this period of national discussion and reconciliation dealing with this tragedy that we will find ways, again, as Americans, to speak of how we resolve differences and how we deal with grievances in our country without resorting to violence.

We have been offered as a people far too many sights and sounds on television of acts of terror visited on people living in foreign lands. Often it passes before the television screen and does not make much of an impact.

Obviously, this tragedy is more immediate. It occurs in the heartland of our country. It is the worst tragedy of its type in the history of our country. It comes at a time when there is a great deal of debate and unsettled feelings in our country about a lot of things. I hope it will require all of us again to decide that in our country, we make decisions in a process by which we debate and discuss and then peacefully resolve our differences in a democratic way and in a democratic system.

So my heart and prayers go to those in Oklahoma City, those who have lost family members, those victims who lost their lives, and those many others who devoted their lives in recent days and nights—often 24 hours a day—trying to help their fellow man and woman.

COMMEMORATING THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. KENNEDY. Mr. President, today marks the 80th anniversary of one of the most tragic events in world history—the genocide that brought death

to more than 1½ million Armenian men, women, and children at the hands of the Ottoman Empire. As we honor the memory of these individuals, we renew our commitment that the world will never forget their tragic suffering.

Between 1915 and 1923, officials of the Ottoman Empire carried out a systematic campaign to eradicate all Armenians. Innocent Armenians were murdered and those who survived were forced to flee their homeland and live in exile. Many of the survivors later made their way to the United States.

The campaign of genocide began with the execution of the Armenian leadership and proceeded with the targeting of the entire male population. It continued with the persecution of Armenian women, children, and the elderly, who were sent on forced death marches to be raped, tortured, and murdered. During this brutal 8-year period, over 1½ million Armenians died through massacres, disease, and starvation.

Unfortunately, even today, the Armenian people face continued violence and ethnic hatred. Since 1988, the conflict between Christian Armenians and Moslem Azerbaijanis for control of Nagorno-Karabakh has resulted in over 10,000 deaths and almost 1½ million refugees. Despite the May 1994 cease-fire and the armistice agreement signed the following month, a permanent solution to the conflict has yet to be found.

The United States has provided substantial humanitarian assistance to Armenia, but it has become increasingly difficult to deliver this assistance because of the continuing blockade by the Governments of Azerbaijan and Turkey. As a result, Armenia suffers from a long-standing shortage of food, fuel, and medical supplies. We need to redouble our efforts to end the current crisis and promote peaceful development of the region.

I commend the tireless efforts of the Armenian-Americans for their efforts to promote a peaceful solution to the conflict, and for keeping their Armenian heritage alive in the United States.

As we commemorate and honor the victims of the Armenian genocide, we renew our commitment to combat ethnic hatred and to end injustice and conflicts throughout the world.

THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. BRADLEY. Mr. President, today marks the 80th anniversary of the Armenian genocide, the first great crime of the 20th century. Over 1½ million Armenians were murdered by the Ottoman Empire and its successor between 1915 and 1923. Many in this country and throughout the world still mourn the relatives they lost in the Armenian genocide. It is important that we take a moment to remember this terrible crime against humanity.

The 20th century has been not only a century of mass murder, but also a century of culpability in which the nations of the world have failed to act to prevent or halt genocide. The slaughter of Armenians was ignored. The international community was too slow to act when the Nazis began killing Jews and Gypsies. Our response to the ethnic cleansing in Bosnia and Rwanda has been feeble.

However, on this day, we not only mourn the losses sustained by Armenia, we also celebrate the contributions of Armenians to our civilization and culture, such as fellow New Jerseyans Christopher Babigian, a prominent physician and community leader, Krikor Zadourian, a leading businessman and community leader, and Haigaz Grigorian, a community leader active in relief work in Armenia, to name a few. Indeed, the American-Armenian community has done much to enrich New Jersey and the United States.

Armenia itself, Mr. President, has now reemerged as an independent state in which Armenians can control their own destiny for the first time in centuries. Tragically, though, Armenia is a country which has thus far been forced to devote its resources to war rather than to building a peaceful, prosperous, life for its people.

It is our responsibility to educate future generations about the dangers of intolerance and to fulfill the pledge of ''never again.'' Remembering the horrors of 1915–23 is one way of rousing ourselves to give meaning to this pledge.

THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. SARBANES. Mr. President, I rise to join my colleagues in commemorating one of this century's most tragic events. Today marks the 80th anniversary of the Armenian genocide of 1915–23, recognized by some as the first genocide of this century when 1½ million Armenian men, women, and children lost their lives as a result of the brutal massacres and wholesale deportations conducted by the Turkish Ottoman rulers.

Mr. President, on this day 80 years ago began one of the great martyrdoms of modern history, a systematic and methodical campaign to exterminate an innocent people. An entire nation was uprooted from its homeland scattering thousands of survivors around the world. Thus this human tragedy, having left few families unaffected, and its anniversary have special meaning to Armenians everywhere.

The 1915 genocide represented the culmination of decades, and the development of an insidious pattern, of persecution against the Armenian community living in the Ottoman Empire. During the period 1894–96 and again in 1909, thousands of Armenians lost their lives at the hands of their ruthless persecutors. On April 24, 1915, Armenian intellectual, religious, and political leaders, were rounded up by Ottoman authorities, taken to remote parts of Anatolia and murdered.

At least 250,000 Armenians serving in the Ottoman Army were expelled and forced into labor battalions where executions and starvation were common. Men, women, and children were deported from their villages and obliged to march for weeks in the Syrian Desert where a majority of them perished.

There was no shortage of contemporaneous newspaper accounts in the United States of the Ottoman Turkish atrocities—a simple review of headlines appearing in the New York Times in mid-1915 yields the following: ''Wholesale Massacres of Armenians by Turks,'' ''Tales of Armenian Horrors Confirmed,'' ''800,000 Armenians Counted Destroyed,'' ''Thousands Protest Armenian Murders.'' In fact, through a congressionally chartered organization called Near East Relief, Americans contributed $113 million in humanitarian assistance from 1915 to 1930 to help the surivors. In addition, 132,000 Armenian orphans were adopted in this country.

Perhaps America's most notable observer of the Armenian genocide was its distinguished ambassador to Turkey at the time, Henry Morgenthau, who published an article in the Red Cross magazine in 1918 describing the wide-scale and deliberate orchestration of Ottoman atrocities against the Armenian people as ''the Greatest Horror in History.'' Morgenthau has also written the following about the Armenian genocide in this now famous passage:

> Whatever crimes the most perverted instincts of the human mind can devise, and whatever refinements of persecutions and injustice the most debased imagination can conceive, became the daily misfortunes of this devoted people. I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared to the sufferings of the Armenian race in 1915. The killing of the Armenian people was accompanied by the systematic destruction of churches, schools, libraries, treasures of art and of history, in an attempt to eliminate all traces of a noble civilization some three thousand years old.

Indeed, Morgenthau and other diplomats who witnessed and reported in great detail the enormous devastation of the Armenian community by the Ottomans would be astonished to learn today that the abundant evidence they collected, much of which is held in our own National Archives, and the testimony of survivors who are still with us, continue to be challenged without a trace of contrition. Despite the irrefutability of the documentation and testimony, including extensive accounts from survivors, witnesses, and historians, there are those who refuse to come to grips with the past, blame the victims, and deride reconciliation.

Remembrance and understanding, however, are universal imperatives essential to all decent people an decent

societies. To be sure, Armenians themselves are committed to the proposition that their experience has meaning for all of us—it must not remain the special province of the survivors. In other words, to ignore or forget the past is to remain its captive, and coming to terms with the past is an indispensable part of building for the future.

Elie Wiesel, speaking at a Holocaust memorial service here in the Congress during the early 1980's, expressed eloquently the importance of recognizing the Armenian genocide when he said:

Before the planning of the final solution, Hitler asked, ''Who remembers the Armenians?'' He was right. No one remembered them, as no one remembered the Jews. Rejected by everyone, they felt expelled from history.

From the darkness of this experience, Armenians have risen to demonstrate great courage and strength in their pursuit of human dignity and freedom. After enduring years of struggle under Soviet rule the Armenians gained independence at last. They now face the effects of a devastating earthquake in 1988, an inhumane economic blockade which continues to hamper the delivery of needed humanitarian assistance, and the hostile forces arrayed against them in their volatile area of the world.

Perhaps the Armenian-American community is one of the best examples of this indomitable human spirit of the Armenian people. The contribution of the Armenian community to the cultural, social, economic, and political life of America is a source of great strength and vitality in our Nation. Americans of Armenian origin have kept alive, and not let tragedy shatter, the rich faith and traditions of Armenian civilization.

Mr. President, in keeping with our country's highest principles and ideals, we pause and pay tribute today to the survivors and the victims who perished in the midst of a deliberate attempt to rid the world of the entire nation. As we recall the events that began on the night of April 24, 1915, we are reminded yet again of the fundamental importance of freedom and respect for human rights, and of the terrible consequences of their abuse.

I ask unanimous consent that a recent column appearing in the New York Times entitled ''For Old Armenians, April is the Cruelest Memory'' be printed in the RECORD at this point.

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

[From the New York Times, Apr. 19, 1995]

FOR OLD ARMENIANS, APRIL IS THE CRUELEST MEMORY

(By Michael T. Kaufman)

The forsythia at the Armenian Home in Flushing are blooming cheerily and the dandelions wink from the lawn, but for the old people who live there, April remains a time of heavy sorrows. They sit silently in sunny rooms, keeping to themselves what they saw and heard and smelled 80 years ago when their people were scattered and killed in the first of the century's many genocides.

''We don't talk to each other about it because everybody has their own terrible stories,'' said Alice Dosdourian, who is 89 years old. They also no longer go to the commemorative gatherings, such as the one to be held this Sunday in Times Square, where younger people mark the years of Armenian agony that began when the Turks killed 235 intellectuals on April 24, 1915. The home's administrators say the memorials were too upsetting for the residents.

''But I never forget,'' Mrs. Dosdourian said. ''I think about what happened all the time. Sometimes I dream about it and I wake up and I hold myself and tell myself, 'No, you do not have to worry, now you are in America.' '' Mrs. Dosdourian has been in America since 1924.

But if the old Armenians discreetly avoided making each other cry, they eagerly took advantage of a stranger's visit to tell what they had seen and endured as children. They are, after all, among the last ones alive who had seen the horrors with their own eyes. They need to reveal their recollections to those who were not there, not to seek redress or make politics, but simply to have the facts acknowledged. And so, one after another, the Armenians clasped a stranger's arm and testified.

Mrs. Dosdourian had been born in Mazhdvan, a village in that part of Turkey where the Armenians had lived for many centuries. She was 6 years old in 1915 when soldiers came and took away her father, a shoemaker. She never saw him again. ''My mother took me and my brother, who was 12, and we walked. We went from village to village. We went to the mountains. I do not know how many months we walked. Once we were in a village where all the men were Armenian heroes, big men who fought until they died. But then the soldiers came and made us walk again.''

There were more than a million who walked, mostly women, children and old men forced across Mesopotamian deserts into Syria. Many drowned and died of hunger. Some, like Mrs. Dosdourian's brother, were shot to death during the exodus. In all, the estimates of the dead ranged between 600,000 and 1.5 million. Until World War II and the destruction of the Jews, it was the sufferings of the Armenians, well documented by journalists and writers, that set standards of horror and contemporary barbarism.

''Every night,'' Mrs. Dosdourian said, ''I heard people shouting that they were robbed by the gendarmes. We were always hungry. People were dying and we had no shovels to bury them. People stayed up at night to protect bodies from dogs and wild animals. People sang out to God, 'How could you let this happen to us?' '' The woman spoke unhesitatingly, sitting erect and keeping her clear blue eyes on her listener.

''One day we came to a river. There were many dead around but in the water there was the body of a young woman floating. I could see her long black hair spread out like a beautiful fan.'' She shuddered and her clear blue eyes filled with tears.

Annahid Verdanian also remembers. She was 4 years old when she was forced from her home with her mother and her father. She and her nurse became separated from the others. At one river she watched as a ferry full of people was turned over. She thinks her family may have been on the boat and drowned. She was adopted by people, some good, some exploitative. She worked as a maid, as a seamstress. She went to Greece and then to Marseille, and then in 1934 she came to Massachusetts, where she worked in textile mills.

Hagop Cividian, who is 86, did not come here until 1990. In French and German he explains his story. With difficulty he talks about a woman named Diana, saying it is important to remember her because she was a real hero. He has written her story but only in Armenian. ''Americans should know,'' he said with passion. ''She was an American.'' She was married to his cousin and they had a 7-year-old boy who was a prodigy on the piano. ''The authorities told her that because she was American she could go but she would have to leave the boy,'' Mr. Cividian said. ''She stayed and died with her husband and son.''

Mr. Cividian managed to live. ''For four years I was hungry, and beaten,'' said the stocky and still muscular man. Later he made his way to Romania, where he became a chemical engineer. ''As a child I saw the Turks kill the Armenians, later I saw Hitler and then Ceaucescu,'' Mr. Cividian said. ''The only time I knew freedom was when I came to America five years ago. Only here I can do what I want. I can think, speak and remember.''

IS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, the impression simply will not go away; the enormous Federal debt greatly resembles that well-known energizer bunny we see, and see, and see on television. The Federal debt keeps going and going and going—always at the expense, of course, of the American taxpayers.

A lot of politicians talk a good game—when they go home to campaign about bringing Federal deficits and the Federal debt under control. But so many of these same politicians regularly voted for one bloated spending bill after another during the 103d Congress, which could have been a primary factor in the new configuration of U.S. Senators as a result of last November's elections.

In any event, Mr. President, as of yesterday, as of Friday, April 21, at the close of business, the total Federal debt stood—down to the penny—at exactly $4,837,382,183,299.27 or $18,362.79 per person.

FATHER ROBERT J. FOX

Mr. PRESSLER. Mr. President, I am pleased to pay tribute to an outstanding South Dakotan and good friend, Father Robert J. Fox of Alexandria, SD. Today, April 24, 1995, marks the 40th year of his dedicated service to the Catholic church and the people of South Dakota.

It has been my personal pleasure to work with Father Robert over the past 6 years in establishing National Children's Day. As national chairman of National Children's Day activities for the Catholic church, he has tirelessly promoted this special day for our children. As a result of his efforts, I expect to see National Children's Day successfully celebrated on the second Sunday of October for many years to come.

Father Robert Fox began his pastoral career at the age of 27 after graduating from St. Paul Seminary school. A little over a year later, on April 24, 1955, he was ordained into the priesthood, and gave his first sermon soon afterward at

the Immaculate Conception Church in his hometown of Watertown, SD.

Over the years Father Robert has faithfully served the Catholic church in many different parishes across eastern South Dakota. He has been ministering in Alexandria since 1985. During his career Father Robert has authored 20 books and numerous articles in Catholic publications. He also has taken pilgrimages with 3,000 youth. Certainly, South Dakotans of all ages have benefited from his very active career of service.

I am just one of many South Dakotans who have profited from Father Robert's wisdom. His valuable advice will always be greatly appreciated. He is loved and respected by many. I am honored to join in observing this very special occasion for Father Robert.

THE DEATH OF JOHN F. BLAKE

Mr. SPECTER. Mr. President, the CIA, the Senate Intelligence Committee and our country lost a loyal servant on March 27 when Jack Blake passed away after a long illness. Jack was an OSS veteran who became one of the CIA's premier managers, serving as its director of logistics, Deputy Director for Administration and acting Deputy Director of Central Intelligence. He also served as president of the Association of Former Intelligence Officers.

In 1981, when Senator Barry Goldwater became the first Republican to chair the Select Committee on Intelligence, he chose Jack Blake to be staff director of the committee. Together, Senator Goldwater and Jack Blake established the principle that the transfer from a Democratic to a Republican majority would not mean an end to the Senate's bipartisan oversight of sensitive national security matters. They also made the point that the intelligence community's best friends were capable of examining its activities with a critical eye, for the sake of improving this vital function and safeguarding the liberties of our citizens.

Jack Blake went on to become a professor at the Defense Intelligence College and frequently brought his classes back to the Hill to meet with congressional overseers and see for themselves that we were not monsters, but people of good will. His tremendous good humor and perseverance served him and his country well. We will miss Jack Blake, but we will also continue to profit from his life of good works. The Senate was fortunate to have known him.

THE DEATH OF RICHARD E. CURL

Mr. SPECTER. Mr. President, our Nation lost a valuable member of its national security team recently, when Richard E. Curl died at the age of 77. Dick Curl was Director of the Office of Intelligence Resources in the State Department's Bureau of Intelligence and Research. He was not the former Director, not the retiring Director, but very much the active Director of that office, even at the age of 77.

Dick Curl devoted his life to intelligence. He served as a naval intelligence officer in both World War II and the Korean war, and with the State Department between those wars. And Dick began his work for INR in 1952. Overall, he gave his country over half a century of service.

Mr. Curl's obituary states that his work ''involved contact with various foreign intelligence services as well as U.S. intelligence agencies.'' Suffice it to say that his role was often that of a mediator between the two different cultures, explaining the uses of intelligence to policymakers and Foreign Service officers while also ensuring that the risks and benefits of intelligence operations were weighed in light of broader U.S. policy interests that might be affected if something went wrong. Much of Dick Curl's career was spent teaching the policy and intelligence communities to listen to each other.

The staff of the Senate Select Committee on Intelligence knew Mr. Curl since at least the early 1980's. They found him a valuable source of information and good counsel. Dick Curl will be missed by both the committee and his country.

RURAL SUMMIT

Mr. DORGAN. Mr. President, I come to the floor for a different purpose today, however. I want to describe something that is happening tomorrow in Ames, IA, and something that happened last Friday in Bismarck, ND.

Some many months ago, I and Congressman DICK DURBIN, from Illinois, asked President Clinton to host a rural summit in our country prior to the writing of the new 5-year farm bill in Congress this year. The President took our suggestion and set December 1 of last year as a date for a rural summit. It would be the first ever of its kind held in this country prior to the writing of a new farm bill.

On December 1, it turned out that the Senate was going to reconvene and vote on the GATT treaty, and the result was the rural summit had to be postponed. The President was required to remain in Washington, and others who were to participate were to remain here as well. A new date was set, and that new date is tomorrow.

The President, the Vice President, the Secretary of Agriculture, and other Cabinet Members will go to Ames, IA, and they will convene a rural summit. The purpose of that is to discuss, before the new farm bill is written, what works and what does not in rural America, what kind of a farm program works to save family farmers, to try to provide an injection of economic life into rural economies; how can we improve on it, how can we change it, how can we offer more hope to rural America?

I give great credit to President Clinton for his willingness to do this. It is long overdue that we take a fresh look at all of the programs and all of the initiatives and all of the efforts that are designed to try to help rural America. This is, after all, one country, not many countries, and the one country includes, yes, some of the biggest cities but also some of the smallest counties.

In my home county in rural North Dakota, as an example, where fewer than several thousand people live in the entire county, they lost 20 percent of their population in that county in the 1980's. In the first 5 years of the 1990's, from 1990 to 1995, the new census report shows they lost another 11 percent of their population.

The flip side of economic stress, that we register in the cities by taking a look at poverty and unemployment, for rural America is out migration, people getting in their car and leaving because there is no opportunity, they feel, in rural counties. What is happening in rural America is that many rural counties and rural areas are shrinking like prunes. The lifeblood is leaving these rural counties.

And so the question is what works and what does not, what kind of a farm plan, what kind of a rural economic development policy should we have in rural America to give everybody in this country a chance; yes, even those who live in sparsely populated areas.

Prior to the summit that will be held in Ames, IA, tomorrow, the President asked the new Secretary of Agriculture, Dan Glickman, to hold six regional forums around the country, and he has done that. I believe the last one is today in Illinois. He held one of those six forums in Bismarck, ND, last Friday.

At that forum, the Secretary of Agriculture brought along most of the Assistant Secretaries, and they were all there as a team from the U.S. Department of Agriculture to listen to family farmers. About 700 to 800 people crowded into this facility, the Farmers Livestock Exchange, to spend 3 hours at this forum. Another probably 200 people could not get into the facility, but because it was broadcast on a couple of radio stations, there were people sitting in the parking lot listening to their radios to hear the discussion during these 3 hours about rural America, about the farm bill, and about what works to try to rescue, revive, and breathe some life into rural America.

I know this subject would not sound very interesting or important to a lot of Americans. Most Americans take a look at rural America or farmers and they do not think much about them. They go to the store and buy elbow macaroni, and it is in a carton. Well, elbow macaroni does not come in a carton. That is the way it is sold, but it comes from semolina flour. You get that by grinding durum wheat that comes from the wheat field of someone who, most often, is a family farmer who risks all of his economic strength

and crosses his fingers and hopes he will not get rained on too much, or that it will not be too dry, or that insects do not destroy the crop. They hope to harvest it, and when they harvest it, they hope the price will not be so low that they lose a ton of money. Those are the risks and uncertainties they face.

Why did anywhere from 800 to 1,000 people show up Friday in Bismark, ND, to meet Secretary Glickman and talk to him for 3 hours about what they think ought to be done? Because it is their livelihood, their future. This is not a case of it being inconvenient if things do not work out. This is a case of losing everything you have if you are on a family farm and things do not work out.

The basic message Friday in North Dakota by all of those family farmers and others speaking to the Agriculture Secretary was a message that the current farm program is not enough and does not work very well. That does not mean that we need more in order to make it work better. The resources we now spend on the farm program in this country, better applied, could provide a better life for family farmers by providing a safety net to give family farmers a chance to make a decent living.

We do not need to provide farm price support to the biggest corporate agrifactories in America for every bushel of grain they produce; yet, we do—a loan rate for everybody in the program for every bushel of wheat they produce, no matter how large they are.

We have all seen reports that the Prince of Liechtenstein was getting benefits for farming in Texas, and a group of Texans who concocted a consortium or amalgamation partnership of sorts and they farm in Montana, section by section, by dropping seeds out of the helicopters. They are not farming the land; they are farming the farm program. We have seen those abuses. We ought to eliminate them.

We ought to change the farm program so that we have a farm program that is actually able to spend less money but provide more help to family-sized farmers. I have submitted a proposal, and I have entered it into the RECORD, and I have written about it, and I will provide a piece I have written on the subject.

This proposal is substantially different than the current farm program. It says let us retain a basic safety net of support prices, and do it in a way that provides the strongest support for the first increment of production, which has the ability to provide the most help for family-sized farms. Above that, you do not need price supports. If you want to farm the whole county, God bless you. But the Federal Government does not have to be your financial partner. You can assume those risks alone.

Second, in addition to a better price support for production designed to help family farmers, let us get government off farmers' backs and stop having government describe what they can plant, when they can plant, and where they can plant it. Let us get family farmers better prices for the output of their production, and let the rest of the people above that—if you want to plant above that—get their signals from the marketplace. More help, less government, at less cost. That is what I want to see from a farm program.

If the purpose of the farm program is not to help family farmers, if that is not the first sentence or preamble of the farm program—we design a farm program because we want the farm program to try to provide a safety net under family farmers, because for social and economic reasons it is important for America to have a network of family farms, and family farmers do not have the financial strength to withstand price depressions that are international price swings; they do not have the financial strength to withstand crop failures and price depressions, so that is why we have a safety net.

If that is not the first line of the farm bill, saying this farm bill is designed to provide a safety net for family-sized farms, then scrap the whole farm bill. We do not need a farm bill to help corporations plow. They will do fine. They are big enough, strong enough, and they can plow enough land to farm the whole country. That is fine. I do not happen to think that is good for the country, but if that is who is going to plow the ground in America, they do not need the farm program.

If it is about helping farmers get a decent price support, make that the first line in the farm bill and make the bill comport to that.

In the early 1860's, President Abraham Lincoln created a U.S. Department of Agriculture. By the way, he had nine employees in the Department of Agriculture in the 1860's. One and a third centuries later, we have a USDA, but it has 100,000 employees, that is adding the Forest Service to it. It is a behemoth organization. My central premise is that it is either going to help family farmers, or we do not need any of the USDA.

The President has done the right thing in having regional farm forums. They are having a rural summit at Ames, IA, tomorrow to listen and hear what farmers are saying in this country and then write a new farm plan that does real good for family farmers.

Let us not just do what we have done for the past couple of farm plans and say we will have the same farm plan but a little less. I do not support that. Let us change it in a way that says this farm program relates to the needs of family farmers, and do it in a way that costs less money to the Federal Government and also has less Government interference in the lives of our farmers.

I am not going to be able to be in Ames, IA, tomorrow. The President invited me to go. He invited Congressman DURBIN to go. Since the House of Representatives is not in session, I expect that Congressman DURBIN will be there. I was not able to take advantage of the President's invitation because it appears we are going to have votes in the Senate tomorrow.

I was pleased to participate in the regional forums, and I am delighted to have been a small part in doing what I think we should do in this country—having the President convene a rural summit and start thinking and talking about what works and what does not, what can work to breathe economic life into our rural counties and towns, what can give people in those areas an opportunity for the same kinds of jobs and hope and future that many others in our country now have.

Mr. President, I want to say that I appreciate the indulgence of the Senator from Washington. I will be coming to the floor to speak on the subject that is on the floor—product liability—at some point in the future. I am on the Senate Commerce Committee and am interested in the subject. I appreciate his allowing me to speak in morning business on another matter.

With that, I yield the floor.

IMPLEMENTATION OF USDA DISASTER ASSISTANCE PROGRAMS IN CALIFORNIA

Mrs. BOXER. Mr. President, I was a strong supporter in the last Congress of the bill passed and signed into law by President Clinton regarding the reorganization of the Department of Agriculture and Federal crop insurance reform. I would like to again extend my congratulations to Senator LUGAR and Senator LEAHY for their outstanding efforts on the passage of this very important legislation.

A driving force behind crop insurance reform was to make basic crop insurance obligatory in an effort to avoid ad hoc disaster bills in Congress. Under crop insurance reform, crops that are not eligible for insurance will qualify for disaster relief under the newly created Non-Insured Assistance Program [NAP]. We are not sure how the NAP Program will work and how effective it will be in helping farmers of noninsurable crops who have suffered a natural disaster. The NAP regulations are still being drafted by the Department of Agriculture.

California agriculture has recently experienced devastating floods. California Food and Agriculture Secretary Henry J. Voss has estimated that damage resulting from the March winds, rains, and flooding in California is over $665 million.

Commodities suffering severe losses statewide include almonds, $208 million; strawberries, $63 million; plums and prunes, $53 million; lettuce, $40 million; and apricots, $20 million.

One of the hardest hit counties is Monterey County, which has suffered over $240,000 million in damages. Over 70,000 acres of agricultural land have been lost or damaged. I share Congressman SAM FARR's grave concern about

how the Department of Agriculture will help these farmers get on their feet again.

My purpose in raising this issue today is to ensure that implementation of crop insurance reform is successful, that it achieves the goal of helping farmers recover quickly, and that it avoid the need for another ad hoc disaster bill.

The Department of Agriculture, in implementing the new Non-Insured Assistance Program and other disaster relief programs, should do so in a way that appropriately meets the needs of California agriculture.

We have the situation in California, especially in the case of specialty crop growers, where farmers may not qualify for the Non-Insured Assistance Program, due to various criteria. Note that of the 250 crops grown in California only about 10 are covered by crop insurance.

There are two specific issues which I hope, with your help, and with the ongoing efforts of Congressman FARR, we can urge the Department of Agriculture to resolve administratively.

At this point, I would like to ask my colleagues Senator LUGAR and Senator LEAHY several questions regarding the implementation of the agriculture disaster assistance programs by the U.S. Department of Agriculture.

Would the Senators agree with me that we must urge the Department of Agriculture to ensure that ''area'' is defined in a fair and equitable manner?

Mr. LUGAR. Yes, I agree that the Department of Agriculture must ensure that ''area'' is defined in a fair and equitable manner, consistent with the need for fiscal responsibility and program integrity. The issue should be resolved administratively so that the definition of ''area'' is sufficiently flexible and sensitive to the agronomic practices of the area that has suffered the disaster.

Mr. LEAHY. I concur.

Mrs. BOXER. Another issue of critical importance to farmers in California and their ability to recover from the disastrous floods they are experiencing is the issue of crop losses in cases where a grower plants and harvests multiple crops in 1 year. To qualify for the Non-Insured Assistance Program, a farmer must lose 50 percent of the crop in a crop year. Loss is counted differently depending on whether a farmer plants the same crop over and over again—as in the case of lettuce growers—or whether a farmer grows and harvests different crops in 1 year.

In the case of a lettuce producer who raises multiple crops of lettuce in 1 year, for example, the producer won't be eligible for non-insured assistance based on losses for a single harvest even if he loses 100 percent of his crop. In comparison, a producer who raises wheat followed by soybeans—which commonly occurs in the south—would be eligible if the grower lost 50 percent of the wheat crop. The grower would again be eligible for his soybeans if he had significant losses. In contrast, the lettuce producer who suffered 100 percent loss of his crop would receive nothing.

Would the Senators agree with me that we must urge the Department of Agriculture to ensure that the multiple planting issue is dealt with in an equitable manner?

Mr. LUGAR. I agree that we must urge the Department of Agriculture to ensure that the ''multiple planting issue'' is dealt within an equitable manner, consistent with the need for fiscal responsibility and program integrity.

Mr. LEAHY. I concur.

Mrs. BOXER. I thank very much Senator LUGAR and Senator LEAHY for their support on this issue. I hope that our statements today will help guarantee that farmers are treated equitably.

There is another issue I am very concerned about regarding the implementation of agriculture disaster assistance programs by the USDA in California. Many small- and medium-sized farmers may not qualify for low-interest loans because they may not be considered a family farm, given the working administrative definition regarding ''the substantial contribution of labor.'' Many specialty crops, including strawberries, by there very nature require intensive labor. It is simply not fair to exclude them from disaster assistance.

We seem to have a disaster assistance policy that is not equitable where small- and medium-sized farmers are concerned. I believe that just as the Federal Government steps in to help small- and medium-sized businesses with disaster relief low-interest loans to help business men and women rebuild, so too it should step in to help families who have staked out their business interests in agriculture. Why should a shop owner who sells fruits and vegetables be eligible for help from the Small Business Committee and not the farmer who planted and harvested those fruits and vegetables?

I urge the Department of Agriculture to ensure that family farm is interpreted to take into account the cultural practices in the area where the damaged crop is being grown, as well as the common agricultural practices of the particular crop in question. I also urge the Department of Agriculture to be as flexible as possible with the working administrative definition regarding ''the substantial contribution of labor'' to ensure that growers of crops that by their very nature require intensive labor not be excluded them from disaster assistance.

I would like to reiterate that the issues I have raised today can be resolved easily if the Department of Agriculture were to carefully consider and take into account the cultural practices in the area where the damaged crop is being grown, as well as the common agricultural practices of the particular crop in question. On the issue of the definition of ''area'' I would like to add the following:

As I previously mentioned, we have the situation in California, especially in the case of specialty crop growers, where farmers may not qualify for the Non-Insured Assistance Program, due to various criteria. Note that of the 250 crops grown in California only about 10 are covered by crop insurance.

To qualify for the Non-Insured Assistance Program, there has to have been a loss in 30 percent of an ''area.'' The term ''area'' was not defined in the legislation and the Department of Agriculture is currently looking into just how this will be implemented. There is talk of ''area'' being defined as a county, or as 250,000 acres or as 35,000 acres. We have crops in California where this definition would automatically exclude many of our farmers. For example, in the counties of Monterey and Santa Cruz, about 45 percent of the strawberry crop for the Nation is grown on a total of 10,000 acres. We must ensure that ''area'' is defined equitably in a way that does not exclude California farmers.

On the multicrop issue I would like to add the following:

To be fair to California farmers, the Department of Agriculture should consider each harvest as a separate crop for the purposes of eligibility for disaster assistance. It is my understanding that this was the policy until 1994 and that the 1995 floods will be the first test case of the new policy. Although it may appear that all crops are treated equitably, this is not the case in reality, given the fact that most program crops are not planted over and over again; they are always intermixed; that is, soybeans after corn, and so forth. Again, I strongly urge the Department of Agriculture to take into account the common agricultural practices of farmers when looking at how crop loss is counted for eligibility to the Non-Insured Assistance Program.

Mr. LUGAR. Mr. President, I understand and applaud the Senator's concern for her constituents. However, I must also urge the Department to be cautious in approaching the definition of ''family farm.'' In years past, the Farmers Home Administation made emergency loans to large farmers in California and other States that led to millions of dollars in individual indebtedness and enormous losses to taxpayers. On March 31, a hearing in the Agriculture Committee pointed up the substantial losses that we are still likely to incur on these loans and made it clear that the Department has continued to write off debt owed by million-dollar borrowers, despite statements of outrage at past lending practices.

Given this unfortunate history, I believe the Department should move with extreme caution and should act to avoid a repetition of past abuses. The Farmers Home Administration—now a part of the Consolidated Farm Services Agency—was intended to serve family

farmers, and the agency's experience in lending to farms of extremely large size is not a happy one.

TRIBUTE TO STATE SENATOR LES KLEVEN

Mr. PRESSLER. Mr. President, last week South Dakota lost a great public servant, State Senator Les Kleven. Les lost a brave and courageous fight against cancer. His leadership and innovation will be greatly missed.

A native of North Dakota, Les moved to Sturgis, SD, in 1962 to start KBHB radio station. Under his direction and leadership, KBHB grew to become one of the premier radio stations in western South Dakota. To this day, it remains an important source of news, information, and entertainment to thousands of listeners in western South Dakota and nearby States. Over the years, Les often had his station broadcast live the meetings I held in the Sturgis area on agricultural disasters, the farm bill, and other important issues. I always appreciated his valuable advice on issues important to the South Dakota broadcast and radio industry, as well as many other issues.

Les was a past president of the South Dakota Broadcasters Association. His love for South Dakota and service to the State did not begin and end with radio. He served three terms in the South Dakota State House of Representatives in the 1970's. In 1992, Les was elected to the South Dakota State Senate. Of course, much as he did on the air waves, he significantly affected South Dakota political currents. Throughout his career as a member of the South Dakota State Legislature, Les distinguished himself as a leader and fiscal conservative. His constituents and his colleagues knew him to be independent, straightforward, and fair. Indeed, his contributions to the State of South Dakota will long be remembered.

Most important, Les was a family man. Though all who knew Les held him in high respect and admiration, none could be more proud of him than his mother Alice, his lovely wife, Marguerite, and his two children, Andy and Jazal.

Les Kleven's honesty and integrity will be greatly missed. His accomplishments as a radio innovator, a State legislator, and a proud father provide an inspiring example of the South Dakota spirit—a man who gave to his profession, his community, his State, and to his family. Les was a family man, a pillar of the community, and a good friend.

We will all miss him.

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

ARMENIAN GENOCIDE

• Mr. LAUTENBERG. Mr. President, I rise today to commemorate the 80th anniversary of the Armenian genocide.

The Armenian genocide marks an ignominious chapter in world history. It reminds us how low unchecked hatred can drag the human spirit, unleashing cruelty and brutality. As we memorialize the Armenians who died needlessly in the genocide, we must resolve never to forget how they suffered at the hands of the Ottoman Empire.

Nor can we forget how the Armenian people continue suffering today as the country struggles to cope with the devastating impact of Azerbaijan's blockade. The blockade has put a stranglehold on the Armenian people. Necessities—like food and heating oil—are in scarce supply. Such shortages endanger the lives of many in Armenia, especially during the harsh winter months.

While humanitarian assistance provided by the United States can help alleviate the suffering, it cannot lift the blockade. Only the Government of Azerbaijan can do that. That is why we must continue to apply pressure. We should not provide United States foreign assistance to Azerbaijan as long as it maintains its blockade of Armenia. The blockade should be lifted without delay.

Mr. President, I hope my colleagues will join me in commemorating this anniversary. It is important that we remember the atrocities of the past, and support efforts to allow the Armenian people an opportunity to live in peace in the future.•

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 proceed to the consideration of H.R. 956, which the clerk will report.

The bill 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 proceeded to consider the bill.

Mr. PRESSLER. Mr. President, as the Senate begins its debate of H.R. 956 I wish, as chairman of the Senate Committee on Commerce, Science, and Transportation, to discuss the provisions of S. 565—the Product Liability Fairness Act—as reported by our committee. S. 565 as reported will be offered as a substitute for H.R. 956, therefore I shall discuss the Senate bill as we begin this debate. Earlier this month, the Commerce Committee conducted extensive hearings over 2 days and then voted 13 to 6 to report the legislation with an amendment on April 6. S. 565 as reported is a fair and balanced bill.

Mr. President, as we begin I cannot help but point out: Here we are again—product liability reform being debated by the Senate of the United States. Do not get me wrong. As chairman of the Commerce Committee, I am proud to bring S. 565 to the floor. So why do I say, ''Here we are again''? It is not that I do not think this is an important issue. Far from it. This bill is vital. It is vital not just to America's businesses but also to our Nation's workers and consumers. It also is vital to the victims of injuries caused by products.

THE HISTORY

It is just that we have come this far before. Indeed, since 1981, the Senate Committee on Commerce, Science, and Transportation has held 23 days of hearings on product liability reform. S. 565 marks the seventh piece of product liability reform legislation reported by the Commerce Committee over that 15-year period. It is my fervent hope this time we can achieve meaningful results.

Mr. President, I see no reason why we cannot. This year's bill is balanced and reasoned. I consider it superior to legislation debated in the last Congress in that it does not include a provision to disallow punitive damage awards in lawsuits for certain manufacturers receiving pre-market certification from the Federal Aviation Administration.

As my colleagues know, that section of last year's bill made this Senator extremely uncomfortable, so uncomfortable as to put me in the equally uncomfortable position of voting against cloture on legislation addressing other legal reforms I have supported and voted for many times over the years.

I personally have been involved in the product liability reform movement since the early 1980's. I am proud of that. I was an original cosponsor of the Risk Retention Act that became law in 1981 and provided for liability insurance pools—or risk retention groups—for businesses. Throughout the 1980's I cosponsored numerous uniform product liability bills with Senators Kasten, Danforth, and GORTON. The early bills were supported strongly by the business community but lacked bipartisan support in Congress. I chaired Small Business Committee field hearings in Sioux Falls and Rapid City, SD, on this issue in 1985.

I commend the efforts to Senators GORTON and ROCKEFELLER with regard to S. 565. They are, indeed, tireless advocates for meaningful reform of America's product liability system. They demonstrated serious leadership in the committee on this issue and the bill reflects their commitment.

KEY PROVISIONS

I would now like to take a few minutes to briefly highlight some of the key provisions of S. 565 as reported.

ALTERNATIVE DISPUTE RESOLUTION

This legislation provides either party in a product liability suit may offer to participate in a voluntary, nonbinding state-approved alternative dispute resolution [ADR] procedure. If a defendant in a products suit is asked to participate in ADR and refuses and later a

judgement is entered for the plaintiff, the defendant will be required to pay the claimants reasonable legal fees and costs if the court determines the defendant acted unreasonably or not in good faith in refusing to participate in ADR. There is no penalty for claimants who refuse to participate in ADR.

The bill's ADR provisions should be particularly helpful to those who experience injuries the system considers minor—generally speaking, injuries that amount to less than $100,000. These individuals often have difficulty finding a lawyer to take their case on a contingency basis due to the expense of preparing for trial. The section also puts claimants squarely in control of whether to choose ADR procedures as a quicker and cheaper mechanism of handling their claim.

PUNITIVE DAMAGES

Although you would not know it to listen to those on the other side of the issue, S. 565 does not remove a plaintiff's ability to recover punitive damages. It does, however, make their imposition more rational.

Punitive damages are not designed to compensate those who have been injured. They are punishment, punishment of defendants found to have injured others in a conscious manner. They are used much as fines are used in the criminal system. However, there are two big differences. First, unlike the criminal law system, there are virtually no standards for when punitive damages may be awarded. Second, when they are awarded, there are no clear guidelines as to their amount.

Under this bill, punitive damages can be awarded if a plaintiff proves, by ''clear and convincing evidence'' that his or her injuries were caused by the defendant's ''conscious, flagrant indifference to the safety of others.'' Thus, S. 565 provides a meaningful standard for when punitives may be awarded.

In addition, the legislation before us allows punitive damages to be awarded in the amount of 3 times economic damages or $250,000, whichever is greater. This provision provides a measure of certainty as to the amount of punishment a wrongdoer will suffer.

STATUTES OF LIMITATIONS AND REPOSE

The bill also establishes a statute of limitations of 2 years from when the claimant discovered or reasonably should have discovered both the harm and its cause. This is another example of how this legislation will benefit those injured by products. Under current law, some States establish the ''time of injury'' as the point at which the time for bringing a claim begins to run. Often this is not a problem. However, where the harm has a latency period or becomes manifest only after repeated exposure to the product, the claimant may not know immediately he or she has been harmed or the cause of that harm.

S. 565 will reduce the number of plaintiffs who, having otherwise meritorious claims, would be denied justice solely on the basis of the statute of limitations in the State in which they choose to file a claim. The bill also establishes a statute of repose of 20 years for durable goods used in the workplace. After such goods have been in the workplace 20 years or longer, no suit may be filed for injuries related to their use unless the defendant makes an express warranty longer than 20 years.

The need for a Federal statute of repose was presented well by one of my fellow South Dakotans, Art Kroetch, chairman of Scotchman Industries, Inc., a small manufacturer of machine tools located in Philip, SD. Earlier this month, he told the committee how vital product liability reform is to the ability of American manufacturers to compete in the global marketplace. Art told me that under the current patchwork of liability laws, his company pays twice as much for product liability insurance as it does for research and development.

JOINT AND SEVERAL LIABILITY

The doctrine of joint and several liability provides that any defendant in a lawsuit may be required to pay all damages, regardless of the degree of fault or responsibility. What are the consequences? One person is held responsible for the conduct of another. True wrongdoers are not always punished. Indeed, the average citizen ultimately pays the claim—either through higher prices, loss of service, or higher insurance premiums.

S. 565 would abolish joint liability for noneconomic damages such as pain and suffering and emotional distress. Thus, each defendant would be liable for noneconomic damages only in proportion to the defendant's share of responsibility for the harm. This section goes a long way in correcting many of the inequities of the joint and several liability doctrine and is essential to any tort reform effort. This section would provide some relief. It is an issue in which I have been particularly interested for many years.

In 1986, I attempted to strengthen proposed product liability legislation, S. 2760, with an amendment regarding joint and several liability. My amendment, which passed the Commerce Committee, would have curtailed the joint and several liability abuse that is all too common in our current system. The amendment abrogated joint and several liability for noneconomic damages in product liability cases. As such, defendants would be held liable based only on their degree of fault or responsibility, not the deepness of their pocket. Unfortunately, that bill was never enacted. I am proud the concept underlying my amendment a decade ago is part of the bill before us today.

ALCOHOL AND DRUGS

S. 565 also provides a defendant will have an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and as a result of this influence was more than 50 percent responsible for his or her own injuries.

I think across the country this is something that is much misunderstood. We see the use of alcohol or drugs by a person operating equipment causing that person to be injured. In these cases, the manufacturer can be held liable, which seems ridiculous. This bill will correct that and will put greater responsibility on everybody to avoid those situations.

BIOMATERIALS ACCESS ASSURANCE

During markup of S. 565, the committee accepted an amendment I offered. In addition to making technical corrections to the legislation, my amendment added a new title to the bill. This title II is identical to S. 303, the Biomaterials Access Assurance Act of 1995 introduced by Senators MCCAIN and LIEBERMAN.

This title would allow suppliers of raw materials—so called biomaterials—used to make medical implants, to obtain dismissal, without extensive discovery or other legal costs, in certain tort suits in which plaintiffs allege harm from a finished medical implant. Specifically, it would allow raw material suppliers to be dismissed from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterials supplier cannot be classified as either a manufacturer or seller of the medical implant.

During its hearings, the committee heard compelling testimony that without such changes in the law, the millions of Americans who depend upon a variety of implantable medical devices will be at risk. Suppliers of biomaterials have found the risks and costs of responding to litigation related to medical implants far exceeds potential sales revenues, even though courts are not finding such suppliers liable.

Indeed, three major suppliers of raw materials used in the manufacture of implantable medical devices recently announced they will limit, or cease altogether, their shipments of crucial raw materials to device manufacturers. All three companies have indicated these were rational and necessary business decisions given the current legal framework.

PRODUCT LIABILITY AND SMALL BUSINESS

Mr. President, from my comments it should be apparent product liability reform is essential to the future health and success of America's businesses. This is particularly true for our small businesses. According to a 1992 Small Business Administration [SBA] study, small firms may be affected more negatively than large firms by nonuniform product liability laws.

This is because small businesses do not enjoy economies of scale in production and litigation costs. In addition, they are less able to bargain with potential plaintiffs. Finally, their limited assets make adequate insurance much more difficult to obtain. The cost of product liability insurance in the United States is 15 times higher than that of similar insurance in Japan and

times higher than in European countries.

America's small businesses need rationality and uniformity in the product liability system if they are to compete effectively in the global marketplace. As I explained previously, this point was at the heart of the testimony given by Art Kroetch of Scotchman Industries in Phillip, SD at the Commerce Committee hearings earlier this month.

It also was the point made to me by Jim Cope of Morgen Manufacturing in Yankton, SD. Jim calls product liability reform a jobs issue for our State. Morgen has had to lay off workers and has been unable to give raises to other employees because of losses due to product liability claims, claims that never resulted in a verdict against his company. Nevertheless, Morgen was forced to spend tens of thousands of dollars defending itself. To Jim Cope, tort reform means more jobs for South Dakota.

PRODUCT LIABILITY REFORM AND CONSUMERS

Aside from the jobs issue, product liability reform also benefits consumers in other ways. It would lower the cost of U.S. goods. The current product liability system accounts for 20 percent of the cost of a ladder, 50 percent of the cost of a football helmet, and up to 95 percent of the cost of some pharmaceuticals—up to 95 percent of the cost of some pharmaceuticals arises from product liability.

Reform of our product liability system also would foster competition and provide consumers with a greater selection of products from which to choose. Studies tell us 47 percent of U.S. companies have withdrawn products from the market and 39 percent have decided not to introduce products due to liability concerns. As a result, Americans depend on single companies to provide such vital needs as vaccines for polio, measles, rubella, rabies, diphtheria, and tetanus.

Finally, S. 565 would encourage safety improvements. The current system encourages companies to discontinue research. Many companies fear research to improve an existing product will be used against them in court to demonstrate they knew the product was not as safe as it might be. Certainty in the system would reduce this counterproductive effect.

In addition, the bill would encourage wholesalers and retailers to deal with responsible and reputable manufacturers. This, in turn, would lead to better products for consumers. Under our bill, product sellers would be legally responsible for products manufactured by companies that are insolvent or do not have assets in the United States. This should increase the quality of the products found on the shelves of U.S. businesses.

Mr. President, I have quickly outlined five ways in which this bill will benefit consumers. First, it will mean more jobs. Second, it will lower the cost of the goods they purchase. Third, it will mean a greater selection of goods from which to choose. Fourth, it will encourage testing to make goods safer. Finally, it will help to maintain and, in some cases, improve the quality of products available to consumers.

PRODUCT LIABILITY REFORM AND THE INJURED

The present product liability system is unfair to those injured by products in at least two ways. The system is full of delay, and compensation that eventually is received, often is inequitable.

Product liability suits take a very long time to process. A General Accounting Office study found, on average, that product liability cases took 2½ years to move from filing to trial court verdict. Most product liability cases are settled before trial, but even these cases suffer from delay. One plaintiff's attorney explained that ''most settlement negotiations get serious only a week or so before trial is scheduled to begin.''

Delay can result in undercompensation of victims. Many injury victims are forced to settle their claims for less than their full losses so they can obtain compensation more quickly. These individuals often are forced into this decision because of inadequate resources to pay for their medical and rehabilitation expenses.

Another way in which the current system inequitably compensates victims concerns proportionality. Numerous studies have found the tort system grossly overpays people with small losses, while underpaying people with the most serious losses.

Mr. President, this provides a brief overview of S. 565 and the variety of ways in which it will help business—both large and small—consumers, and those injured by products. In short, product liability means jobs for American workers. It means innovative products for American consumers. It means swifter and more equitable compensation for victims. It means international competitiveness for American companies.

This is why I strongly support S. 565. It is good for small business. It is good for their workers. It is good for consumers. It is good for those injured by products. In other words, Mr. President, it is good for America.

I might add, I have been in my State these past days and many people have come up to me saying we need to end frivolous lawsuits. That is a term that is understandable. We need to preserve people's right to sue when something is really wrong. But everybody is suing everybody. It is a sort of lottery out there. The average person is beginning to understand this increases the costs of goods and services. We do want to preserve people's rights to sue. Certainly when there has been a wrong done, there should be punishment, but we want to try to improve our legal system, and this bill is a step in that direction.

I want to commend Senator GORTON and Senator ROCKEFELLER and others, who have worked so long and hard on this. We are very blessed to have their leadership. I stand in strong support of S. 565.

Mr. ROCKEFELLER. Mr. President, the issue of product liability reform is well known to many Senators. I look forward to the debate we begin today because I believe that the bill that we will be considering, S. 565, the Product Liability Fairness Act, builds upon past deliberations of this body to achieve reform in the moderate, bipartisan manner that has characterized this effort in recent years.

Let me pause a moment to thank my colleague and friend, Senator SLADE GORTON, for all his efforts and counsel in crafting the bill that we have introduced. In addition, Senator LIEBERMAN, Senator DODD, Senator HATCH, and Senator MCCONNELL have played critical roles in writing this legislation and bringing us to the point of floor deliberation.

Mr. President, the Senate has considered the topic of product liability reform for over 14 years, and six times the Commerce, Science, and Transportation Committee has reported bills favorably to the floor. Most recently, the committee reported out the current bill, S. 565, by a vote of 13 to 6 on April 6.

We have persisted in our efforts to reform the laws governing product liability because we believe that the current system is broken and that we can make changes that will benefit both consumers and makers of products. We have tried, and I think succeeded, in achieving balance in our effort to streamline the law in this area. We have simultaneously reduced costs and delays for both plaintiffs and defendants.

In 1985, when I first came to the Senate and joined the Commerce Committee, I voted against a product liability reform measure. The committee vote was tied at that time, and I felt strongly that the version of the bill then being considered aided manufacturers at the expense of safe products for American consumers.

Since then, the product liability effort has changed 180 degrees. The legislation has evolved into the even-handed, moderate approach we are considering today. Senator GORTON and I have worked diligently over recent months to hone the bill we are looking at today to ensure that it strikes the right balance between the interests of both consumers and business. Adjustments were made to reflect substantive and other concerns which we concluded were obstacles to the enactment of this bill. We believe we have significantly improved the legislation from earlier drafts and have been responsive to the issues which prevented earlier enactment of this legislation.

Let me draw my colleagues' attention to the substantive changes made in this year's bill compared with the version introduced in the last Congress. The most significant change addresses concerns that have been raised about excessive punitive damages—

damages that are awarded to punish and deter wrongdoing. This year's bill establishes a standard for awarding punitive damages that is essentially unchanged from last year's bill. We have, however, added a provision that requires punitive damages to be awarded in proportion to the harm caused at a ratio of three times a claimant's economic loss or $250,000, whichever is greater. Our rationale for this ratio is the goal of bringing to punitive damages some relationship between the size of the harm and the punishment, a goal supported by the American Bar Association, the American College of Trial Lawyers, the American Law Institute, and the U.S. Supreme Court.

Also concerning punitive damages, we eliminated the Government standards defenses in last year's bill, referred to as the FDA and FAA defenses, which would have prevented punitive damages for instances in which certain classes of products, such as drugs, medical devices, or certain types of aircraft had been certified by the Federal Government as safe. While I remain supportive of the concept of a Government standards defense, a number of Senators expressed reservation during last year's debate about this provision, and we have accommodated those concerns by removing the provision.

Another change in this year's legislation concerns the statute of repose, which we have slightly modified to include a category of products known as durable goods used in the workplace. Last year's bill was restricted to workplace capital goods, a slightly narrower category. Workplace durable goods are defined as having an economic life span of 3 years or greater or being depreciable under the Tax Code. The workplace distinction, identical to last year's bill, preserves the intent of increasing incentives for employers to maintain the safety of equipment used in a place of employment, rather than shifting that responsibility off to a manufacturer even after the useful life of the product in question has expired. In addition, we have moved the statute of repose period to 20 years from 25 years in last year's bill, which is still longer than any State statute of repose, the longest of which is 15 years.

The third significant change made prior to introduction of this year's bill concerns the addition of a provision that had been part of last year's House companion bill that requires a reduction of a claimant's award due to unforeseeable misuse or alteration of the product. For example, if someone purchases a hair dryer that has attached to it a large warning label stating, ''Do not use in the bathtub,'' and the purchaser immediately uses the hair dryer in the bathtub with adverse consequences, it does not make sense to hold the manufacturer liable for such misuse, and this provision would prevent that.

In addition to the changes made prior to introduction, several substantive changes were made in the Commerce Committee markup of the bill. First, we incorporated a bill, S. 303, the Biomaterials Access Assurance Act, introduced by Senator LIEBERMAN and Senator MCCAIN, as title II of our committee-reported product liability bill. This title of the bill is designed to ensure that needed raw materials are available to the manufacturers of medical devices by limiting the liability for firms that supply biomaterials. The title only limits liability for suppliers who have done nothing wrong; the ability of consumers to recover from negligent device manufacturers is preserved.

We made several other substantive changes in the committee markup. We modified our product seller provision to extend protection to blameless rental and leasing companies. This will address the fact that in 11 States car rental companies can be forced to pay for damage caused by people who rent their cars, even though the car rental companies did nothing wrong. We made a change to the statute of repose that will ensure that manufacturers keep their promises by enabling injured workers to sue for damage caused by products over 20 years old if the manufacturers guaranteed their products' safety for a longer period.

Finally, we modified our alternative dispute resolution provision, which gives States an incentive to create proplaintiff, voluntary, nonbinding arbitration mechanisms. This provision contains a penalty for defendants who ''unreasonably refuse'' to participate in the arbitration, and a criticism was raised during hearings on the bill that greater specificity was needed for the definition of ''unreasonable refusal,'' so a set of factors was added to address that concern.

Mr. President, I will have a lot more to say about the substance of the bill as debate unfolds, but I know that other Senators wish to speak, so I would like to keep my remarks brief. Let me conclude by restating the reasons that we must pass national product liability reform this year.

Under our current system, injured consumers often find it impossible to get a just and prompt resolution, and just as frequently, blameless manufacturers are forced to spend thousands of dollars on baseless lawsuits. The system frequently allows negligent companies to avoid penalties and even rewards undeserving plaintiffs.

Product liability law should deter wasteful suits and discipline culpable practices but not foster hours of waste and endless litigation.

The adverse effect of having a hodgepodge of rules is severe for everyone. Injured persons and those who make products alike face a 55-unit roulette wheel when it comes to determining rights and responsibilities. The results hurt everyone. Injured persons have testified that they may be unable to obtain needed medical devices for their continued health and well-being. Manufacturers have indicated that good and useful products are not placed on the market. The Brookings Institution has documented many instances where safety improvements were not made because of fear about uncertainties in our legal system. Included in their discussion were built-in child seats and air bags.

As I have studied this complex area, I have found that incentives for preventing accidents are often not in the right place. In formulating our bill, we have striven to place incentives on the person who can best prevent an injury. This is a matter that has not been given adequate attention during past debates, but given the opportunity to carefully study our bill, Senators will see that care and thought has been invested to assure that no wrongdoer goes unpunished and that positive prosafety behavior is encouraged.

For all of these reasons, I look forward to our debate, and I welcome the criticisms, insights, and suggestions for improvements that I'm sure our colleagues will contribute during this process.

I yield the floor.

AMENDMENT NO. 596

(Purpose: Substitute reported committee language of S. 565 for H.R. 956)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 596.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. GORTON. Mr. President, what I have sent to the desk to be treated as the matter before the Senate is the text of S. 565 as it was passed by the Senate Commerce Committee just over 2 weeks ago. H.R. 956 is, of course, the text of the bill which was passed by the House of Representatives.

I hope that we will debate the bill and the report that was passed by the Commerce Committee and will use that as our text. It is for that reason that I have offered this substitute.

Mr. President, the debate over product liability legislation, which begins here this afternoon, is both important and controversial.

It has both of those qualities because it deals with two elements of our life as Americans that are vitally important to everyone. The first of those qualities is the openness of our courts for the redress of grievances to individuals or to groups of individuals by other individuals, groups of individuals, or corporations doing business in the United States. That is a value and a set of rights cherished, of course, by all Americans.

The other good—sometimes a conflicting one—is the desire of the American people for a growing and a prosperous society, for the development and marketing of new goods and services, and for the creation of economic opportunity to our young people, indeed beyond our young people, to all Americans.

At its base, of course, the economic prosperity and viability of our country. So, we here in the two Houses of the Congress of the United States are constantly faced with the necessity, in a dynamic economy and a dynamic society, of balancing these goals with other goals in our society. And it is the restoration of that balance, a balance often distorted to one side of the equation, which is the goal both of H.R. 956, a bill on the subject that has already passed the U.S. House of Representatives, and S. 565, which now is before this body.

This is far from the first occasion on which we have debated product liability, either on a broad scale or a narrow scale, in the U.S. Senate. At least since 1982, bills on this subject have been before the Commerce Committee of this body and frequently before the Senate itself. Already in the course of this debate, however, at its outset, we have gone farther down the road toward reform than in any Congress since the early 1980's. On some occasions, bills have been recommended by the Commerce Committee but never taken up on this floor. On at least two occasions, including the last Congress, bills have been reported favorably by the Commerce Committee. The following motions to proceed to the debate, however, were debated and in fact debated successfully, under the guise of a quasi-filibuster, and cloture was not attained on the motion to proceed. So never have we been in a position to debate the merits of product liability reform itself or, indeed, to offer amendments to those bills which have been reported by the Senate Commerce Committee.

In the last Congress, my friend and colleague from West Virginia, Senator ROCKEFELLER, and I had a bill not dissimilar from this reported from the Commerce Committee by a not dissimilar vote and debated here on the floor for the better part of a week. Before, on two occasions, cloture on the motion to proceed was defeated in spite of having received a substantial majority of the votes of the Members of the Senate. So I know I speak both for the primary sponsor of the bill, the Senator from West Virginia, as well as for myself, in expressing our gratification at the fact that, for the first time in the career of either one of us, we are literally discussing a bill on this subject, and of this importance.

The last Congress, however, did succeed in passing a bill which ultimately became law on one narrow element of product liability. The last Congress created a 1-year statute of repose with respect to product liability actions concerning small private aircraft. And I submit that Members of this body should carefully consider the debate on that proposal, which also lasted over the period of several Congresses, the arguments made on either side, and the results of the passage into law of that aircraft statute of repose.

It had been the claim of small aircraft manufacturers in the United States that their business had effectively been destroyed by product liability litigation. Several famous manufacturers of small aircraft had literally gone out of business. Others were no longer engaged in the manufacture of such aircraft. And those who stayed in the business had their business very significantly reduced, to the point at which, if my memory serves me correctly, the production of such aircraft in the United States over a 20- or 30-year period had declined by close to 90 percent. The industry, in other words, was almost dead in this country.

The opponents of the statute of repose argued, among other things, that litigation had nothing to do with that loss of business. The proponents, including the manufacturers, argued that even this relatively minor relief would result in a substantial recovery of that business. Ultimately, after several Congresses, less than 2 years ago such legislation passed and was signed into law, and already that recovery has begun. Already some of those manufacturers have opened up lines of production, have begun new assembly lines and are back in business.

Has litigation against negligence in the manufacture of private aircraft been terminated by that bill? Of course not. All that Congress passed was a simple statute of repose of 18 years. Already, however, we have seen the creation of jobs, the beginning of the renaissance of an industry, and the return of American companies manufacturing in America to a business out of which they had been almost totally driven. Yet, as Members of this body will learn during the course of debate on this legislation, there are many States with no statutes of repose at all. For other products or equipment, we still face the actuality and the possibility of product liability litigation involving equipment and manufactured items manufactured and originally sold in the 19th century, over 100 years ago.

So in this case we are attempting, on a broader basis, to restore a balance between the fundamental and undoubted right of people to sue when they have been injured by faulty products and the protection of manufacturers and sellers against unwarranted litigation. We will show how this imbalance has caused perfectly good products had to be withdrawn from the market and caused manufacturers to go out of legitimate and important businesses, businesses important to the people of the United States. In turn, this has discouraged research into many important areas and has discouraged the development of products resulting from that research.

So, Mr. President, when Members of this body listen to the kind of doomsday scenarios, threats about the end of justice in our legal system, they may wish to reflect on similar arguments made by many Members of this body less than 2 years ago with respect to the aviation industry, and look at the actual results of such legislation.

I believe that there is a carefully balanced proposal equalizing the right to sue with the encouragement of the American economy and a right to be free from frivolous suits and huge legal bills in connection with matters that do not arise out of any degree of negligence, or which are overcompensated.

So, Mr. President, I am especially pleased to support the Product Liability Fairness Act of 1995. Legislation carefully crafted to reflect a bipartisan spirit that takes a moderate and sensible approach in reforming the product liability system of United States.

What are our goals? Our goals are a system that is fair and efficient; a system that is, to the greatest possible extent, yields predictable results; one that awards damages both proportional to the harm suffered as a result of negligence and in a timely manner, and one which reduces the overwhelmingly wasteful transaction costs associated with the present product liability system.

Finally, this is a bill which builds on the genius of those who wrote the Constitution of the United States, those who placed plenary authority in the hands of Congress to regulate interstate commerce. No occupation can be more intimately involved with interstate commerce than the system by which liability is adjudged with respect to the impact of products manufactured, sold and utilized in every one of the 50 States of the United States.

(Mr. THOMAS assumed the chair).

Mr. GORTON. Mr. President, there are in fact few valid arguments against a greater degree of uniformity and a greater degree of predictability with respect to impacts of such transactions. Estimates of total court costs of litigation and assorted transactional costs range from $80 to $117 billion a year to manufacturers and sellers in this country. It goes without saying that these costs are immediately forced back onto consumers through higher prices for products which Americans use every day.

The current product liability system accounts for approximately 20 percent of the cost of the simple ladder and one-half of the cost of a football helmet. Injured parties receive less than half of the money spent in product liability litigation. More than half goes to the lawyers, and those who work with them in prosecuting and defending that litigation. Nearly 90 percent of all manufacturers and many retailers and wholesalers in the United States can expect to become a defendant in a product liability case at least once. The cost of product liability insurance is 15 times greater in the United States

than it is in Japan, and 20 times greater here in the United States than it is in Europe.

As I have already said, manufacturers can still be sued today for products manufactured in the 1800's, simply because the present potential defendant purchased, at some time or another, the company that was engaged in manufacturing in that century.

As I have just pointed out, the product liability system in the United States is the world's most costly. The editors of a book entitled ''The Liability Maze'' published by the Brookings Institute in 1991 notes:

Regardless of the trends in tort verdicts, most studies in this area have concluded that, after adjusting for inflation and population, liability costs have risen dramatically in the last thirty years, and most especially in the last decade.

Mr. President, the cost of litigation, court proceedings, attorney fees, and expert fees—in other words, transaction costs associated with the current system—are absolutely outrageous. A 1992 study indicates that for every $10 paid to claimants by insurance companies for product liability cases, another $7 is paid for lawyers and other defense costs. That is defense costs only. If the contingent fee of plaintiff's attorneys is factored in, lawyers' fees account for more than 60 percent of the funds expended on product liability cases.

Obviously, liability insurance costs reflect these increased transaction costs, and insurance rates rise accordingly. Over the past 40 years, general liability insurance costs have increased at more than four times the rate of growth of the national economy. One small manufacturer in my own State of Washington, Connelly Water Skis, Ltd. pays $345,000 a year for liability insurance, even though that company has never lost a product liability case.

Paradoxically, the victims of this system are very often the claimants, the plaintiffs themselves, who suffer by the actual negligence of a product manufacturer, and frequently are unable to afford to undertake the high cost of legal fees over an extended period of time. Frequently, they are forced into settlements that are inadequate because they lack resources to pay for their immediate needs, their medical and rehabilitation expenses, their actual out-of-pocket costs.

In 1989, a General Accounting Office study found that on average, cases take 2½ to 3 years to be resolved, and even longer when there is an appeal. One case studied by the GAO took 9½ years to move through our court system. In an insurance industry study, it was found that it took 5 years to pay claims with an average dollar lost and that ''larger claims tended to take much longer to close than smaller claims.''

An early insurance offices product liability study found that injured plaintiffs with losses of between $1 and $1,000 received on average 859 percent of their actual losses, while those with losses over $1 million received on average 15 percent of their losses, even before attorneys fees were paid.

This is to be contrasted with the results of those lawsuits we often see in the newspapers, or hear about on television, in which a particular plaintiff has received a bonanza, a lottery style set of winnings.

In today's system, consumers, manufacturers, and product sellers are trapped in a product liability litigation system that is essentially a lottery. Identical cases in two different States often produce strikingly different results. And, of course, here in the United States we have 51 separate product liability systems—in 50 States and the District of Columbia, while the European Economic Community, Australia, and Japan each have adopted a uniform, predictable product liability statute. In one of the many hearings held on this issue over the years, University of Virginia law professor Jeffrey O'Connell explained, and I quote him:

If you are badly injured in our society by a product and you go to the highly skilled lawyer, in all honesty the lawyer cannot tell you what you will be paid, when you will be paid or, indeed, if you will be paid.

Three distinguished judges: Chief justice, Richard Neely, of the supreme court of West Virginia; Federal district court judge, Warren Eginton, author of the ''Product Liability Journal;'' and New Jersey Court of Appeals judge, William Dreier, author of the ''Product Liability Journal of New Jersey,'' have presented congressional testimony attesting to the need for uniformity. While they state that there will naturally be different interpretations of any law, conflicting interpretations will obviously be fewer with a single law than with 51 different ones.

Uncertainty in the present system is a reason for change. Plaintiffs, those injured by faulty products, need quicker, more certain recovery—recovery that fully compensates them for their genuine losses. Defendants, those who produced the products, need greater certainty as to the scope of their liability.

Mr. President, under the current system, consumers are required to pay increased and unnecessarily high prices on necessary goods. Here again the excessive costs of an out-of-control tort system fall on the shoulders of consumers through increased prices.

An example. Lederle Labs, the lone maker of diphtheria, pertussis, and tetanus vaccine, raised its dose from $2.80 to $11.40 simply to cover the costs of lawsuits. According to Prof. George Priest of Yale Law School in testimony before the Senate Judiciary Committee this month, excessive punitive damages awards have increased the general price level for products and services provided in the United States economy, harming consumers—and low income consumers most of all.

In addition to higher prices, Americans suffer from the current system because of the lack of choice. At the present time, for example, only one company is willing to supply vaccines for polio, measles, mumps, rubella, rabies, and DPT. In 1984, two of the three companies manufacturing the DPT vaccine decided to stop production because of product liability costs. Can it seriously be asserted that we should abandon that vaccine?

Later that same year, the Centers for Disease Control recommended that doctors stop vaccinating children over the age of 1 in order to conserve limited supplies of the DPT vaccines for the most vulnerable infants.

Next, product development is hindered in many ways by the existing system. The unpredictability of the product liability system discourages the development of innovative products and cutting edge technology. Innovation is frequently stifled because scientific research essential for advanced product development is foregone or abandoned, due to the excessive costs of product liability.

In 1984, a closed claims study by the ISO found that United States industries spent more on product liability defense costs than on buying equipment to boost productivity.

In an American Medical Association report titled ''The Impact of Product Liability on the Development of New Medical Technologies,'' we read, and I quote:

Innovative new products are not being developed or are being withheld from the market because of liability concerns or inability to obtain adequate insurance. Certain older technologies have been removed from the market, not because of sound scientific evidence indicating a lack of safety or efficiency, but because the product liability suits have exposed the manufacturers to unacceptable financial risks.

Rawlings Sporting Goods, Mr. President, a leading manufacturer of competitive football equipment for more than 80 years, announced in 1988 that it would no longer manufacture, distribute or sell football helmets. Joining Spalding, McGregor, Medalist, Hutch, and others who have stopped manufacturing helmets, Rawlings was the 18th company in as many years to give up the football helmet business because of increasing liability exposure. Two manufacturers out of the 20 that existed in 1975 remain in the helmet business today.

A recent article in Science magazine reported that a careful examination of the current state of research to develop an AIDS vaccine, and I quote, ''Shows that liability concerns have had negative effects.'' It points out that Genentech, Inc., halted its AIDS vaccine research after the California Legislature failed to enact State tort reform. Only after a favorable ruling did that company resume its research.

And consider—perhaps because of its history this is the most important quotation of all—the comment by Jonas Salk, inventor of polio vaccine:

If I develop an AIDS vaccine, I don't believe a U.S. manufacturer will market it because of the current punitive damage system.

Think of where we would be had we had the present system when Dr. Salk developed the polio vaccine. Would it not have been marketed? Would we still be faced with that scourge?

Not only does the present system hurt medical innovation, it also inhibits small companies from producing everyday goods.

Again, in my own State, for example, Washington Auto Carriage of Spokane distributes various kinds of truck equipment throughout the United States. Here is what its owner, Cliff King, says. And I quote him:

> We have been forced out of selling some kinds of truck equipment because of the exorbitant insurance premiums required to be in the market. As a result, this type of equipment tends to be distributed only by a few very large distributors around the country, who can afford to spread the cost over a very large base of sales. Ultimately, there is much less competition in those markets.

In other words, Mr. President, as tough as the present system is on large corporations, it is even tougher on small companies—companies who can be driven out of business by a single lawsuit.

Mr. President, I spoke a few moments ago about the undoubted interstate nature of our product manufacturing and distribution system and the overwhelming justification for a greater degree of uniformity than we have today, and for the obvious constitutional basis in the commerce clause for such legislation.

One would expect, however, that many of those connected with State government would oppose any further limitation of their control over their tort systems. Yet, the representatives of the top organization of State elected officials, the National Governors Association, recognizes both the need for product liability reform and the necessity of such reform at the Federal level. A resolution adopted by the National Governors Association last January summarizes both the need and the support of State Governors for change in the product liability system here by the Congress of the United States. In part, the resolution adopted by the NGA reads:

> The National Governors Association recognizes that the current patchwork of U.S. product liability laws is too costly, time-consuming, unpredictable and counter-productive, resulting in severely adverse effects on American consumers, workers, competitiveness, innovation, and commerce.
>
> The issues of product liability reform has increasingly pointed to Federal action as a way to alleviate the problems faced by small and large businesses with regard to inconsistent State product liability laws. This lack of uniformity and predictability makes it impossible for product manufacturers to accurately assess their own risks, leading to the discontinuation of necessary product lines, reluctance to introduce product improvements and a dampening of product research and development. American small businesses are particularly vulnerable to disparate product liability laws. For them, liability insurance coverage has become increasingly expensive, difficult to obtain, or simply unavailable. Further, the system causes inflated prices for consumer goods and adversely affects the international competitiveness of the United States.
>
> Clearly, a national product liability code would greatly enhance the effectiveness of interstate commerce. The Governors urge Congress to adopt a Federal uniform product liability code.

It should be noted at this point, Mr. President, that this resolution reflects the position that former-Arkansas Governor, William Clinton, supported during his many terms as Governor.

Mr. President, I believe it appropriate, briefly at this point, to outline for Members the chief reform features of this proposal. While it makes more uniform laws related to product liability in many fields, it continues to defer to the States in many other areas. As such, it retains a balance between Federal and State concerns over this branch of interstate commerce. It does so, however, in a thoughtful and sober fashion by eliminating those elements of the present system that cause the greatest degree of uncertainty and have the most adverse impacts on interstate commerce, on productivity, on the creation of jobs, and on the competitiveness of American business.

First, Mr. President, we reform the almost uniform system of joint and several liability. In most States, when there are multiple defendants in a product liability action, a deep-pocket theory applies. Under the joint and several liability rule, any defendant who has contributed in any way, to an injury can be held responsible for the entire amount of the damage award. Such a deep-pocket rule encourages plaintiffs and their lawyers to target the wealthiest defendant in each case, even if that defendant can be, and has been found, by the jury to be only minimally at fault.

S. 565 provides for only several liability and not for joint liability on noneconomic damages. This means that each defendant is liable only for his, hers or its portion by reason of its proportion of the fault in causing the injury. This is currently the law in the State of California.

It does, however, apply only to noneconomic damages, those that include pain and suffering and emotional distress. Under this bill, States will be permitted to retain joint liability, if they wish to do so, for economic damages—medical costs, lost wages, and so forth—so that an injured plaintiff can be assured of recovering fully, no matter who the source of that recovery, for those actual out-of-pocket damages themselves.

Pain and suffering and other noneconomic losses under this bill will be tied to the concepts of both fault, and also responsibility.

Mr. President, it is unfair and highly unproductive to make defendants pay for damages of a nature that are literally beyond their control or beyond their fault. In California, it has been found, under this new law, that juries are much more likely to apportion liability fairly according to each defendant's fault.

Mr. President, the particular kind of damages about which we read most frequently are punitive damages. Punitive damages, of course, are damages awarded to punish the defendant, rather than to compensate the victim either for the victim's economic or noneconomic emotional damages. As such, they are a troubling concept in our system of law.

Generally speaking, we punish for criminal activities through the Criminal Code, a code which provides a multitude of protection for those accused under it—proof beyond a reasonable doubt, a right against self-incrimination, limited sentences designed to fit the crime. None of these concepts, however, applies to the imposition of punitive damages. A handful of States, my own included, do not generally permit punitive damages in civil litigation at all. And, Mr. President, there is nothing to indicate that justice is denied in those States, that recoveries on the part of the injured plaintiffs are inadequate, or that companies operate in a less safe and responsible fashion.

I can express a personal preference, dating from the time at which I was admitted to the bar for such a system, for the use of nonpunitive damages only, in civil litigation. But because the vast majority of the States utilize such a system, this bill continues to permit it in States that allow it at the present time, but with a number of limitations.

Under this law, claimants would be required to provide, by clear and convincing evidence proof, that a defendant engaged in egregious misconduct and there would be a degree of proportionality in punitive damages—a cap of $250,000, or three times the economic damages awarded, whichever is greater. A separate jury consideration of punitive damages would also be required from the determination of the jury for compensatory damages.

Reforms of this nature are supported by mainstream academic groups in the American Bar Association and the American College of Trial Lawyers. More recently, these reforms were recommended in a 5-year report studied by scholars of the prestigious American Law Institute.

Third, this bill deals in general terms with exactly the subject of last year's aviation product liability bill, a statute of repose. Under the current product liability system, manufacturers are liable for injuries caused by products without regard to the age of these products, even when the equipment has been rebuilt, altered, or used improperly. Mr. President, it is clearly unreasonable to hold a manufacturer liable for a product that may have been made 30 or more years ago, particularly when it has no control over the use or maintenance of that product.

S. 565 adopts a 20-year statute of repose for workplace durable goods, or less if State law provides a lower statute of repose. By this provision, we inject a degree of predictability in a system, which literally at the present time calls for endless liability.

One example, Mr. President. Since 1830, the firm of Davis & Ferber was one of the largest textile machinery manufacturers in the world. Recently, that company was required to defend itself against a claim involving a machine that left its plant in 1895 and had been modified again and again by different owners for 88 years. In 1982, Davis & Ferber was forced out of business because of the high cost of settlement in this case.

There is one other element of this bill notable for this opening debate, and that element arises out of the fact that at the present time, consumers can sue, not only the manufacturer of an alleged faulty product, but also the retailer who sold it or the firm that rented or leased the product. In over 95 percent of all such actions, the manufacturer ultimately pays any judgment that is awarded, but the web of litigation adds to spiraling unnecessarily legal costs to the wholesaler or the retailer that are ultimately paid for by the consumer.

Under S. 565, product sellers, as well as those who engage in the leasing and renting of products, will be liable for their own negligence or failure to comply with an expressed warranty but not for the negligence of the manufacturer. These provisions will reduce litigation among retailers, wholesalers, distributors, lessors, renters and manufacturers saving legal costs that, at the present time, are passed on to the consumer in the form of higher prices. Unless they are directly responsible for product failure due to negligence or misrepresentation, a seller, lessor, or renter shall not be held liable for injuries caused by a product. If the manufacturer is negligent, that manufacturer should be liable.

Mr. President, in summary, this proposal is aimed at a very real challenge and a very real problem in our society today. It is aimed at spiraling costs of litigation, far more often than not, on the part of manufacturers and sellers in successful litigation, but costly and risky nevertheless.

It is aimed at limiting recovery to those who are responsible by their own negligence for injury to a far greater extent than is the case today; to providing an end to that responsibility after two decades, in the case of certain manufactured equipment; to limiting the arbitrary nature of punitive damages, as the Congress has been invited to do by the Supreme Court of the United States and fundamentally to seeing to it that a greater share of the recovery in litigation of this sort gets to the injured party and less to transactional costs, the present division of which is a disgrace.

Mr. President, as I said at the beginning, I am gratified that for the first time in a debate, which has lasted in the Congress of the United States for almost two decades, we are actually discussing the merits of this kind of legislation. I look forward to a spirited and contested debate, but I also look forward to a conclusion, which creates a greater degree of balance and restores a degree of fairness, competitiveness and common sense to American industry and to its employees.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, in the words of our fearless leader, President Ronald Wilson Reagan, ''Here we go again.''

As we begin the proceedings, Mr. President, the issue is whether the Members of this body will agree to have an open and full debate on this legislation.

Each time this legislation has been brought before the Senate, the proponents have offered up one anecdote after another to justify the bill. We have attempted to ensure that, at a minimum, this bill is fully examined and debated.

I am particularly concerned about the manner in which the current bill has been rushed through without much time for review. The legislation was introduced on March 15. A couple of weeks later, the Commerce Committee held 2 days of hearings and then a markup a day and a half later. The substitute offered at markup—which was not received until 6 p.m. The preceding evening—contained a number of changes and amendments. None of the changes was ever considered by the committee, at the hearings or before the markup. Now, less than a week after the bill was reported, the bill is up for consideration on the floor.

I am not certain what is driving this process. I understand that there may be a desire by some to act in accordance with the House Republicans' Contract With America agenda. However, I did not sign the so-called contract, and as far as I know, neither did any other Senator.

The sole purpose of this bill is to erect barriers regarding the use of the civil justice system for redress of injuries caused by dangerous products. However, I would like to remind the supporters of this bill that unlike the judicial systems of other countries, the American judicial system is rooted in democratic principles of individual redress, the right to a jury trial, and reliance on the people to resolve disputes. These were principles established by the Founding Fathers when they proposed the adoption of the 7th and 10th amendments to the Constitution. Surely, issues such as whether to limit access to courts, limit redress remedies, or penalize citizens for merely bringing suits were considered by the Founding Fathers, as well as the judges and State officials that have administered our system of justice for over 200 years. But they decided against such measures, and opted instead to maintain a system that features free access to the courts, common law, and giving the people the ultimate authority to resolve conflicts. The supporters of this bill, however, are seeking to overturn this longstanding American history and judicial precedent.

I am, in fact, confounded by the fact that the Senate is even considering this legislation. At the beginning of this Congress, Member after Member came to the floor during consideration of S. 1, the unfunded mandates bill, to declare that this would be the Congress of ''States rights,'' where government would be returned to the people. The Jeffersonian democracy of government was revived. If I heard it once, I heard it a million times, that State and local governments know best how to protect the health and safety of their citizens, and that they do not need Congress telling them what to do. How many times did I hear that the one clear message sent by the voters last November was that the people wanted to get the Federal Government off their backs and out of their pocket?

The 10th amendment, lost in the shuffle for many years, was given new light. The majority leader himself, in his opening address to the new Congress, proclaimed:

> America has reconnected us with the hopes for a nation made free by demanding a Government that is more limited. Reigning in our government will be my mandate, and I hope it will be the purpose and principal accomplishment of the 104th Congress.
>
> We do not have all the answers in Washington, DC. Why should we tell Idaho, or the State of South Dakota, or the State of Oregon, or any other State that we are going to pass this Federal law and that we are going to require you to do certain things.

The majority leader went on to say:

> Federalism is an idea that power should be kept close to the people. It is an idea on which our nation was founded. But there are some in Washington—perhaps fewer this year than last—who believe that our States can't be trusted with power. If I have one goal for the 104th Congress, it is this: That we will dust off the 10th Amendment and restore it to its rightful place.

Those are the words of the majority leader himself. These words, spoken so eloquently, make it clear why the Congress should stay out of the business of the States.

During consideration of the balanced budget amendment, Senator BYRD made a compelling argument with respect to the need and obligation of this body to give thorough deliberation to bills that impact our Nation's constitutional structure. He spoke of the need of Members to carefully read and study legislation.

I ask, Mr. President, how many Senators have carefully read this bill? How many are aware of how this bill will affect their constituents? For example, how many Members know that this bill will result in disparate treatment of working-class Americans? How many

Members know that this bill stands to perpetuate discrimination against women and children? How many Members know that this bill will make it much more difficult for workers who suffer product-related injuries to recover for their injuries?

How many Members are aware of how this bill will affect the comfort level we have in the drugs we buy, and the health and safety devices we use? How many are aware of how it will impact their State laws, judicial order, and constitutions? These are the important questions that must be answered, and deeply debated before we consider passing this bill.

The proponents claim that this is a modest bill, one that is different from the House bill, and more reasonable than previous Senate bills. First, Mr. President, this is not an accurate statement. This bill actually has reincorporated many provisions of previous Senate bills that many sponsors of the current bill once opposed. Second, we all know that, if a Senate bill goes to conference with the House bill, House Members will be pushing their version of the bill.

The proponents have offered a number of explanations regarding the need for this legislation. However, every claim that has been made about the need for this bill has been refuted.

The proponents initially lamented that the legislation was needed because of a liability insurance crisis. The alleged crisis became the impetus for the entire tort reform movement. According to Prof. James Henderson, a major supporter of tort reform, and Prof. Theodore Eisenberg of Cornell University, tort reformers were concerned mostly about convincing the American public that there was a crisis and linking the alleged crisis to product liability. They showed less concern over the reality of the crisis itself. The idea was to tie the product liability system to the crisis in a way that reshaped public opinion. Efforts were forcefully made to link the so-called crisis to basic American activities, such as Little League baseball and the Boy Scouts—almost literally motherhood and apple pie. To quote Professors Henderson and Eisenberg, ''using every technique of modern media-shaping, tort reform groups sought to insure that the public believed that products liability law was the cause of this threat to their way of life.''

This, Mr. President, is according to Prof. James Henderson, a supporter of tort reform. Numerous studies have shown, however, that product liability had nothing to do with the availability or affordability of insurance. In fact, during the midst of the so-called crisis, the director of government affairs for the Risk and Insurance Management Society—an association of corporate risk managers which includes more than 90 percent of the Fortune 1000 companies—himself expressed concern about linking tort reform and the insurance availability crisis. Studies by the GAO, and numerous other studies, have shown that to the extent there was a crisis, it was caused by insurance companies themselves, not product liability.

But what is conspicuously missing from this bill, Mr. President, is any requirement that insurance companies submit data to justify the premiums charged to businesses. Former Texas Insurance Commissioner Robert Hunter has stated clearly that unless the insurance problem is resolved, the whole matter concerning legal or transaction costs will not be addressed by this bill.

Next, the sponsors contended that the bill was needed because of a litigation explosion. Some continue to make this claim, despite ample evidence that there never was, and is not now, any litigation explosion.

A recent study by the Rand Corp. found that less than 10 percent of the people who are injured by products ever even consider filing a lawsuit, and only 2 percent actually go forward with filing a suit. According to recent statistics published by the National Center for State Courts, product liability cases are only 4 percent of State tort filings, and a mere thirty six-hundredths of 1 percent of all civil cases.

Throughout this debate, there has been an inordinate degree of contempt toward the American jury system. Some have even characterized the system as an open lottery. However, this is part of a well organized misinformation campaign. The evidence unequivocally demonstrates that our Nation's jury system has not run amok. Last June, the New York Times featured a front page story on how juries are growing tougher on plaintiffs. Citing the latest research by Jury Verdicts Research, Inc., the Times states that plaintiffs' success rates in product liability cases have dropped from 59 to 41 percent since 1989.

Professors James Henderson and Theodore Eisenberg of Cornell University released a study in 1992, which showed that product liability filings had declined by 44 percent by 1991. They concluded that by ''most measures, product liability has returned to where it was at the beginning of the decade,'' beginning in the 1980's.

A 1991 New York University Law Review article by Prof. James Henderson, along with Brooklyn Law School Prof. Aaron Twerski—another major supporter of tort reform—stated that:

> With sharper focus and fewer distractions, American products liability may be better equipped than ever to provide appropriate incentives for product manufacturers and distributors to act responsibility in the public interest. But the days of wretched excess are over, very probably for the indefinite future.

Where is the real litigation explosion, Mr. President? It is in the corporate board rooms. According to Prof. Marc Galanter of the University of Wisconsin Law School, the real litigation explosion in recent years has involved businesses suing each other, not injured persons seeking redress of their rights. He found that business contract filings in Federal courts increased by 232 percent between 1960 and 1988, and by 1988 were the largest category of civil cases in the Federal courts.

Reports by the National Law Journal show that since 1989, of the 83 largest civil damage awards nationwide, 73 percent have involved business suits. Between 1987 and 1994, just 76 of the top business verdicts alone have accounted for more than $10 billion. In 1993, the top 13 business verdicts alone amounted to approximately $3 billion. They included: Litton Systems versus Honeywell, a patent infringement dispute—$1.2 billion; Rubicon Petroleum versus Amoco, a breach of contract dispute—$500 million, including $250 million in punitive damages; Amoco Chemical versus Certain Lloyds of London, a breach of contract dispute—$425 million, including $341 million in punitive damages; Avia Development versus American General Realty Investment, a breach of contract—$309 million, including $262 million in punitive damages. Of course, this does not include the greatest verdict of them all—the $10.5 billion awarded in 1985 in the Pennzoil versus Texaco case. According to the testimony of Jonathan Massey, an expert on punitive damages, the total punitive damage awards since 1965 come to only a fraction of the $3 billion punitive award in Pennzoil versus Texaco. However, the proponents of S. 565 refuse to even discuss that businesses themselves might be the primary reason for increasing litigation—which leads me to their new claim that product liability is stifling competitiveness.

Like the refutation of the insurance crisis and litigation explosion, it has been clearly proven that product liability has nothing to do with American business competitiveness. According to a survey of 232 risk managers of the largest corporations in the country, product liability for most businesses is less than 1 percent of the final price of products, and has little, if any, impact on larger economic issues, such as market share or jobs.

The Office of Technology Assessment conducted an extensive study of the competitiveness of American businesses and did not, among its findings, list product liability as a primary problem or concern. The GAO recently stated that it ''could find no acceptable methodology for relating product liability to competitiveness, and that businesses refuse to release the information needed to conduct such an analysis.'' Mr. President, we should not be debating this bill without having the information necessary to make an informed decision, information that businesses and insurance companies are unwilling to provide.

To the extent that American businesses are having competition problems, it has nothing to do with products liability. It could, however, have a lot to do with our Nation's trade and

economic policy. In fact, I am somewhat surprised that we are even discussing competitiveness after the passage of GATT and NAFTA. It was my understanding that the these were the so-called panacea to our trade dilemma. The fact of the matter, Mr. President, is that if we are going to have a discussion about trade policy, then let us have that debate, and quit wasting time with these nonessential issues.

The proponents have had ample time to make their case, and have yet to produce any evidence to justify the passage of this legislation. It is for these reasons that I believe that this legislation must be defeated.

It would be irresponsible of us as Members of Congress, to consider a bill that has such serious consequences for American consumers, without, at the very least, requiring the sponsors of such a bill to provide factual data—not anecdotal arguments—to support their claims.

Mr. President, as we talk about ''Here we go again,'' and in listening to my distinguished colleague from Washington, he has a very, very reasonable demeanor, and as he pleads how this, after years, has been worked out and is so reasonable, I would not want my colleagues to be misled.

First, this is not a more reasonable bill and the distinguished Senator knows it.

For the past three Congresses, we have not had caps on punitive damages. But now we do have caps in this particular bill. In the past Congresses, we never had misuse, the failure to follow directions. Now we have a provision in here for misuse. I could go right on down the list. The argument is that years of having this idea turned back is the reason now to come forward; however, the very reasons for having been turned back persist even more strongly.

It persists more strongly, Mr. President, because that is the theme of this particular Congress. Whether we like it or not, we have the Contract With America. Whether we like it or not, we have what they call a revolution. And the theme of that revolution and contract, Mr. President, is that the Government here in Washington is the enemy; the Government is not the solution, the Government is the problem. And whether we like it or not, the only way to do it is tear it down and get rid of it and maybe some day rebuild. But for now, get rid of the department of Congress; get rid of the Department of Housing and Urban Development; abolish the Department of Energy; abolish the Department of Education; cut out the revenues, give everybody a tax cut. Of course, we are operating at over a $300 billion annual deficit. We do not have any revenues to cut. But in this pollster exercise behind political reelection, cut the revenues, cut the taxes, increase the deficit, get rid of the departments, and send it all back to the States. That is the very old theme—Jeffersonian.

I have never heard so many Republicans fall in love with Jefferson. They all say that the best government is that closest to the people. Get it back there. When it comes to crime, the bill that we passed really should be reduced to block grants. We debated it and we had Republican support for that crime bill. But now, all of a sudden, that same crime bill that we debated for some 3 years before it was passed needs to be block granted to get it away from the Washington bureaucrats. With respect to welfare reform, get that back to the States. The States know better how to handle these things. Housing—get that back to the States. Whatever it is, abolish the entity up here at the Washington level and get it back to the States and the local level.

That is the theme of the contract save, Mr. President, this fix—and this is a fix. This is a fix. They ought to get my friend down there who has been fixing it for years, Victor Schwartz. That is who O.J. needs. He has taken a little time to get it fixed, but Victor Schwartz, representing this small little manufacturing entity is fixing it. The chambers of commerce, the National Association of Manufacturers, the Business Roundtable, all of those are not interested in injured parties; they are interested in injured pocketbooks.

Of course, they are making more profits than they ever made in their lives. That is what we heard on the GATT: Do not worry about it, we are competitive now, and we have to get a mindset for global competition. And do not worry about the pharmaceutical companies which, they pointed out, with truth and distinction, are making their biggest profits.

But now, under this bill here, we are told that the pharmaceutical industry cannot produce a drug at all on account of product liability. The chemical industry, the biotechnology industry, all of the industries that have been leading in wealth and corporate profits, they have reached higher ceilings than you have ever seen in the history of this land. But now, to justify this bill, we are told America's industry has gone broke, and we finally have found a real solution here in product liability. If we can only get this Federal fix, can you imagine that? With all of the things going on in this town. The tax cut was given the very same day they had the circus out on the east front, trampling around. After that, they want to finally come and ask, ''Who can do it better than the States and the people that sent us here?''

That is a sort of interesting thing to this particular Senator. The people back home are so wise, so studied, so alert, so sensible with the issues of the contract, and the very same people that sent us here to Washington all of a sudden have lost their minds when it comes to product liability. They do not really know how to make a judgment. Of course, they are the only ones who heard the sworn testimony; they are the only ones who are familiar with the facts. But irrespective of the facts, and particularly the English law, the tort system, adopted by the several 50 States over the 200-some year history of this land, all of a sudden we do not single out herein and say automobile accident cases, we do not single out and say, well, there are contract cases exploding. They talked about a litigation explosion. That is where it is, not here. We do not single that out. But we single out this unique fix. And, as I say, here we go again, because nothing has changed.

The American Bar Association, Mr. President, appeared and testified against this bill despite this quick fix because they just had summary hearings before our Commerce Committee that reported the bill out, just as we were leaving town, and we were told it was going to be the first thing called. You can bet your boots they will file cloture tomorrow. They do not want to debate this and understand the law. Just a bunch of business Senators on the Commerce Committee with this fix are going to take care of manufacturers. Just at a time that what we really need to do is get the welfare recipients more responsible, we want to make the manufacturer more irresponsible.

It is the darnedest experience I have ever seen in a mature group. It shows how controlling pollster politics has become, because if you have been in a recent race back home, they are obviously conducted in accordance with the polls. The candidates have too many things to say grace over, and when it comes to product liability, when the chamber of commerce comes, and the business group comes, and they all seek to see the particular candidates, it shows up in the polls. It makes the candidate say it is a terrible problem and, yes, I am for product liability at the Federal level.

Well, how did we start this? We started this under President Ford, and our distinguished President Ford had the good, common sense to realize that it was an onrush of business nonsense, because we have the safest products and we have business booming, and we have, as they talk about, lack of competitiveness. I have foreign industries just diving into my State and saying: We want to come under your product liability law, South Carolina. We love it. One hundred German industries and over 50 Japanese industries have come in—I could go right on down the list.

I have worked in the field now almost 40 years, working and bringing industry in. Never once—never once—have I heard a business leader or industrialist say, ''Representative or Governor or Senator, what about this product liability? We are worried about juries and runaway verdicts,'' and that kind of talk that you hear up here at this level.

We never heard that, and we do not hear it today. When they had the hearing, it was an actual embarrassment,

having worked in the vineyards over these many years, to see the witnesses that they brought in to try to give credence to their hearing. They had some makeshift, unnamed organization, and they came with what? They came with statistics about businesses suing businesses down in Alabama.

We could go on over to Texas. We have the business of Pennzoil suing Texaco, and I remember that was a $12 million verdict. That is more than all the product liability verdicts put together over the history of product liability in this land. Add them up. One business verdict, Pennzoil. But the sponsors of the bill started out first saying there was a litigation explosion. Again, we studied it out and we find that actually in tort cases, in civil filings in the courts of the several States over this land, tort only represents 9 percent of all civil filings, and that 4 percent of the 9 percent, or .36, is product liability.

The trend, in the State's justice system, it was firmed up again in our hearings, is lowering, going down. There has been one exception that has held constant, and that is the asbestos cases. Other than that, tort filings and product liability are diminishing rather than increasing. They are receding rather than exploding.

What has exploded is business suing business—and we will have plenty of time, I am sure, with the amendments we will have at hand, to cite the various verdicts. If they are really worried about money, if businesses are worried about money, they better stop suing each other and keep their contracts.

So we had first the litigation explosion. Then they said that they could not get insurance. They were using these little vignettes, anecdotal examples. They use that Little League and some babble, that same nonsense, about the cost of insurance being more than the bats and the uniforms and everything else.

I guess kids do get hurt. Mine played in the Little League, but we never had any trouble with the Little League in my town of Columbia, SC, at that time, and later on in Charleston, SC, we have not had any real problem with the Little League. It is a very viable, wonderful group. I guess in certain instances they take out insurance, but they have not been denied on account of product liability.

They tried, more recently, to update it into the McDonald's coffee case, saying what a terrible thing, this lady who had been burned by the coffee ought to have known better. She really did not have a claim.

I was very much interested, Mr. President, in that treatment given by Newsweek magazine for product liability. In the Newsweek magazine, in the account of the juror in the McDonald's coffee case, she said she thought at first it was a frivolous claim. Thereafter, on listening, she found out there were 700 cases of individuals being burned by the coffee.

Of course, the question that this Senator asked was, ''Why?'' It comes to my attention now, of course, if the heat of the water is increased inordinately over the coffee beans, you get more coffee. Money—money—is the answer here. It is the answer in this particular case.

The Conference Board questioned 232 particular risk managers. These risk managers overwhelmingly said product liability was less than 1 percent of the cost of the operation. Even the business study showed it was not a litigation explosion.

The availability of insurance problem was studied and found to be bad real estate investments they made in the early and mid-1980's. Like our S&L crisis, the savings and loan industry principally based in the investment in homes, real estate, shopping centers, and what have you—the insurance companies in their real estate portfolio had similarly used bad judgment. The result was that the cost had gone up, but more recently the availability has been there and everything else of that kind.

Then they said we should be more like the European system, the EEC, so we could compete with them. During 1988, 1989, 1990, we found out the European system became more similar to ours, and we put those documents in the record, with joint and several liability moving toward the American system rather than the other way around.

Now they say ''compete''—we want Government to compete. If they had listened to our debates with respect to NAFTA and GATT, we would have found out how this Government can compete, because this is what it is: government-to-government competition in international and global trade. Forget David Ricardo and Adam Smith and comparative advantage and free market. We will discuss in this debate where the Japanese approached Alexander Hamilton—incidentally, the approach of using the Government to determine what decisions can be made in the theory of free market, but whether or not it strengthens the economy or whether it weakens the economy.

On that governmental approach with business, immediately you say, ''Wait a minute. That is industrial policy.'' Well, you are right. I think after 45 years of trying for free market, free market, free trade, free trade, we finally learned our lesson. We cannot do as we do or do as we say; we have to find out the predominance. The global competition is the Japanese model. The Japanese model has been emulated not only throughout the Pacific rim but by Germany and countries in Europe and particularly now the East European countries.

The Japanese have schools. They have instructors in the system, as South Korea has done, Taiwan and Singapore, Malaysia, and the others have done. That is why we just had our Secretary of the Treasury in Bali on an economic summit and monetary conference and they cannot seem to understand why they are not going for free trade, free trade, free trade. This crybaby whining about opening up your markets—the fact is, we are losing our industrial and manufacturing backbone.

I was at a conference not many years back with Akio Marita, of Sony, in Japan. He came, and Marita at that time, talking of emerging countries, said that you had to have a strong manufacturing sector if you were going to be a nation-state. Then he went on to say, ''Look, that country that loses its manufacturing power ceases to be a world power.'' And that is what has happened with merry old England. They told the Brits some years back, rather than a nation of brawn we are going to be a nation of brains. Instead of producing products we are going to provide services, ''service economy, service economy.'' We have heard that same chant here on the floor of the U.S. Senate. ''Instead of creating wealth we are going to handle it and be a financial center.'' And England has gone to hell in an economic handbasket. They have two levels of society there. And that is exactly the road your country and my country is on at this present time.

So, with respect to competing on product liability, being a deterrent, let me invite you to any State in America, and particularly mine, where you will find foreign entities, as a result of the lack of a competitive trade policy, have come in now and bought up, with gusto, the American entities and are now producing those Japanese cars and other products here in the United States, like gangbusters. They are down right now, with the devaluation of the dollar, into Miami. I read that in the Wall Street Journal, where they are buying it up down there right and left, because the dollar has lost 20 percent of its value against the mark since the first of January.

The sponsors of the bill have used every argument that they could possibly think of. And again and again and again the States involved say, ''No, we don't need this.'' Again and again and again that bipartisan group, the American Bar Association, has said, ''No, this is bad legislation.'' And, again and again and again, the Conference of State Supreme Court Justices has come in and testified that, as a group, they oppose this.

Then the sponsors come in and say, with a straight face, that what they are trying to do is get uniformity. Now, now, now—uniformity. Uniformity. It is very interesting that this particular bill provides no uniformity; no uniformity when it comes to holding the manufacturer responsible. Oh, yes, we want uniformity for the customer, the consumer, the user of the particular product, but not for the manufacturers themselves.

There is no better example of an unfunded mandate than this particular

bill. Everyone has attested to the fact that, because the bill has not given a Federal cause of action, you leave it at the State level, with words of art enunciated by this high and almighty Congress up here that knows best, exactly what to do and what caps there are and what tests there are, all to be interpreted by the 50 supreme courts of the 50 States. And then, if there is a further appeal, up to the U.S. Supreme Court. So what is started, is a surge against lawyers, ''Get rid of the lawyers.'' Now more lawyers are going to be hired under this particular bill just for product liability, which is not a national problem whatever. But they manufacture it and rig it so, even in contradiction to their own theme of trying to give meaning and cause to the 10th amendment that those things not delegated under the Constitution to the Federal Government shall be reserved to the several States.

No, no. They do not want this one reserved to the States. In spite of the legislatures, in spite of the attorneys general, in spite of the Supreme Court Justices, in spite of the American Bar Association, and in spite of—oh, heavens above—the list of different groups here that we have who oppose this so-called product liability bill—they, all of a sudden, are being so reasonable. They do not really care what passes. They are going to get into conference with that House crowd and that House crowd has gone amok now. Look at what's going on over there—I mean they can really sell them on voting to cut revenues that they do not have. They have a $300 billion deficit but they say we have to buy the vote, we have to get to the middle class. Unfortunately, I do not speak in a partisan fashion, the President of the United States says the same thing. There are a group of Senators here, in a bipartisan fashion, who say we cannot afford tax cuts. But here it is.

Mr. President, I ask unanimous consent this list of entities be printed in the RECORD at this particular point.

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

WHO OPPOSES THE ''CONTRACT WITH AMERICA'S'' LIABILITY REFORM?

Action on Smoking and Health.
AIDS Action Council.
Alabama Citizen Action.
Alaska Public Interest Research Group.
Alliance Against Intoxicated Motorists.
Alliance for Justice.
American Association for Retired People (AARP).
American Association of Suicidology.
American Bar Association.
American Board of Trial Advocates.
American Coalition for Abuse Awareness.
American Council on Consumer Awareness.
American Public Health Association.
Americans for Democratic Action.
American Federation of Labor and Congress of Industrial Organizations.
Arab American Anti-Discrimination Committee.
Arizona Citizen Action.
Arizona Consumers Council.
Arkansas Fairness Council.
Association of Trial Lawyers of America.
California Citizen Action.
California Crime Victims Legal Clinic.
California Public Interest Research Group.
Center for Public Interest Law at University of San Diego.
Center for Public Interest Research.
Center for Public Representation, Inc.
Center for Women Policy Studies.
Children NOW.
Citizen Action.
Citizen Action of Maryland.
Citizen Action of New York.
Ctizens Action Coalition of Indiana.
Citizen Advocacy Center.
Citizens Clearinghouse for Hazardous Waste.
Citizens Coalition for Chiropractic.
Clean Water Action Project.
Coalition for Consumer Rights.
Coalition of Labor Union Women.
Coalition to Stop Gun Violence.
Colorado Public Interest Research Group.
Command Trust Network.
Connecticut Citizen Action Group.
Connecticut Public Interest Research Group.
Consumer Action.
Consumer Federation of America.
Consumer Federation of California.
Consumers for Civil Justice.
Consumers League of New Jersey.
Consumer Protection Association.
Consumers Union.
Cornucopia Network of NJ.
Democratic Processes Center.
DES Action of New Jersey.
DES Action USA.
DES Sons.
Empire State Consumer Association.
Essex West Hudson Labor Council.
Fair Housing Council of San Gabriel Valley.
Families Advocating Injury Reduction (FAIR).
Federation of Organizations for Professional Women.
Florida Consumer Action Network.
Florida Public Interest Research Group.
Fund for Feminist Majority.
Georgia Citizen Action.
Georgia Consumer Center.
Gray Panthers.
Handgun Control, Inc.
Harlem Consumer Education Council.
Help Us Regain the Children.
Hollywood Women's Political Committee.
Idaho Citizens Action Network.
Idaho Consumer Affairs, Inc.
Illinois Council Against Handgun Violence.
Illinois Public Action.
Illinois Pubilc Interest Research Group.
Institute for Injury Reduction.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Teamsters.
International Ladies Garment Workers Union.
International Longshoremen's and Warehousemen's Union.
Iowa Citizen Action Network.
Judge David L. Bazelon Center for Mental Health Law.
Justice for All.
Kentucky Citizen Action.
Lambda Legal Defense and Education Fund.
Latino Civil Rights Task Force.
Lead Elimination Action Drive.
Local 195, International Federation of Professional and Technical Engineers.
Louisiana Citizen Action.
Maine Peoples Alliance.
Maryland Public Interest Research Group.
Massachusetts Citizen Action.
Massachusetts Consumer Association.
Massachusetts Public Interest Research Group.
Michigan Citizen Action.
Michigan Consumer Federation.
Minnesota COACT.
Minnesotans for Safe Foods.
Missouri Citizen Action.
Missouri Public Interest Research Group.
Montana Public Interest Research Group.
Mothers Against Drunk Drivers.
Mothers Against Sexual Abuse.
Motor Voters.
National Asbestos Victims Legal Action Organizing Committee.
National Association of School Psychologists.
National Black Women's Health Project.
National Breast Implant Coalition.
National Council of Senior Citizens.
National Coalition Against the Misuse of Pesticides.
National Conference of State Legislatures.
National Consumers League.
National Council of Jewish Women.
National Fair Housing Alliance.
National Farmers Union.
National Head Injury Foundation.
National Hispanic Council on Aging.
National Organization for Women, Virginia Chapter.
National Rainbow Coalition.
National Women's Health Network.
Nebraska Citizen Action.
Network for Environmental & Economic Responsibility.
United Church of Christ.
New Hampshire Citizen Action.
New Jersey Citizen Action.
New Jersey Environmental Federation.
New Jersey Public Interest Research Group.
New Mexico Citizen Action.
New York Consumer Assembly.
Niagara Consumer Association.
North Carolina Consumers Council.
NOW Legal Defense Fund.
Nuclear Information and Resource Service.
Ohio Citizen Action.
Ohio Consumer League.
Ohio Public Interest Research Group.
Oregon Consumer League.
Oregon Fair Share.
Pennsylvania Citizen Action.
Pennsylvania Citizens Consumer Council.
Pennsylvania Institute for Community Services.
Pennsylvania Public Interest Research Group.
People's Medical Society.
Public Citizen.
Public Citizen's Texas Office.
Public Interest Research Group in Michigan.
Public Voice for Food and Health Policy.
Purple Ribbon Project.
Ralph Nader.
Safety Attorneys Federation.
Southern Christian Leadership Conference.
Southern Poverty Law Center.
Stephanie Roper Committee, Inc.
Tennessee Citizen Action.
Texas Alliance for Human Needs.
Texas Citizen Action.
Third Generation Network.
Truth About Abuse/S.O.F.I.E.
Uniformed Firefighters Association of Greater New York.
United Auto Workers.
United States Public Interest Research Group.
Violence Policy Center.
Voices for Victims, Inc.
Vermont Public Interest Research Group.
Virginia Citizen Action.
Virginia Citizens Consumer Council.
Virginia NOW.
Washington Citizen Action.
Washington Public Interest Research Group.
West Virginia Citizen Action.

White Lung Association of New Jersey.
Wisconsin Public Interest Research Group.
Wisconsin Citizen Action.
Women Against Gun Violence.
Women's Institute for Freedom of the Press.
Women's Legal Defense Fund.
Young Women's Christian Association.
Youth ALIVE.

Mr. GRAMS assumed the chair.

Mr. HOLLINGS. Mr. President, there are over 100 of these organizations all over the country, not only the trial advocates, of course, but the consumer organizations, the AFL–CIO, the working people and everything else of that kind.

I will dwell, later on, on what good has really come of product liability. We never hear that. We act like it is one of the most torturous things in the world. The truth is that under product liability the using public here in the United States of America can pretty well count on the safety of particular products. What happens in rare cases, and they are rare ones, is that something goes wrong—with respect to medical devices, the Dalkon shield and the different other devices of that kind; the Pinto case. I can tell you, the other day 4 million Chrysler minivans were pulled off the market to change the back door switch. That multimillion-dollar effort on behalf of the traveling public in America was certainly not brought about by the National Association of Manufacturers or the chamber of commerce or the Business Roundtable. It was as a result of the product liability system that we have in America.

The sponsors could not produce a Governor. I was waiting at the hearing for a Governor to come in and say we need a national law. The truth is that 46 of the 50 States over the last 15 years have treated their particular problems. In my State they debated it. They got together, not only with the chamber of commerce and the trial lawyers, but the insurance companies and all other business groups, consumer groups, and they worked out upgrading, as they thought needed to be done, the State law on product liability in South Carolina.

Now we are going to come and say, ''Well, you did not know what you were doing. We know best up here. In fact we do not have any work to do. We are going to meddle into your State entity under the 10th amendment here that which has historically been under the States. We are going to want it handled still by the States, but with our guidelines.''

Heavens above, to come at this particular hour here, right at the so-called climax of the Contract With America, based upon the idea that ''that government closest to the people is the better government,'' to come now and say, ''no, no, no'' with respect to this matter, product liability, we have to get it up to the Federal level—I want to see that Governor who comes and says so, because he is just politically answering the Contract With America and political polls.

I have been a Governor. You go before your legislature and you change things that need changing, whatever they are. If you have a good enough case, that legislature, that is very close to the people, is going to respond. But this has been a national fix for over 15 years.

President Ford had a study commission. The result of that study commission said to leave it to the States. They did not like that. So they come in year in and year out, nibbling here and there, ''Well, can I get your vote if I change this? Can I get your vote if I change that?'' There's a fix on this side of the Capitol to get together with the House crowd to move forward with the English system, with caps, with all the other particular interests that they may be able to tag on.

Like the sheepdog that has tasted blood now with that contract, they are going to turn to product liability and gobble up the rest of the flock while they can. Maybe so. Maybe so. But I hope my colleagues in this supposedly most deliberative body would stop and look and listen and understand that this is not any fairness act whatever. Everyone who has really treated with this, as lawyers—I will have to make a talk later on about the lawyers.

We can go to Shakespeare where he said the first thing we do is kill all the lawyers. That was because the only thing standing between tyranny and freedom were lawyers. Jefferson was a lawyer. All these others, we could go down and mention these forefathers, outstanding lawyers, and, of course, they really drew that Constitution and they really had a feel for individual freedoms and the right of trial by jury under that seventh amendment. There are not any restrictions on that seventh amendment—until now. But now we are going to put on a national restriction that says a trial by jury should conform to these particular guidelines that we on high have decided, because you do not have sense enough at the local level to listen to the judge that charges that jury.

I am going to yield because I see the distinguished chairman of our Judiciary Committee, who I am sure is proud of lawyers and is ready to speak.

We could take murder cases like the O.J. Simpson case, and federalize that. I can give them some guidelines where they can move through in a judicious and expedited fashion rather than the theater that they have going on out on the west coast. No one would really dream of putting in a bill to federalize murder and murder cases with Federal guidelines.

One big interest I have had as an attorney is: Give me a Federal cause of action. Let us get some uniformity amongst the 50 States.

The 50 States, incidentally, do not mind taking some 50 to 75 insurance policies—and I have been in the insurance business—the 50 States do not mind going before the 50 State commissions and filing their particular policies. They say with insurance they have a very difficult time trying cases under different jurisdictions. Well, they do it with respect to all business and contracts. We have certain uniformity under the Restatement of Torts. But with respect to insurance itself, they will not give the Judiciary Committee or the Commerce Committee the facts as to how they have been losing money. They came in the mid-1980's and said there was a big insurance problem. We had an amendment which we will propose again—requiring information that they file.

We have the Senators from the insurance State of Connecticut who are going to be heard later on. That crowd up there, Aetna, Hartford, the different insurance companies that are benefiting and making even more money will not tell you where they have had their losses. We have tried to get that information. I have been chairman of that committee for years on end, and now ranking member at this moment. But you cannot find the facts about insurance because they file them separately in the 50 States and they tell you they do not have a correlation. I know you have to have an actuary if you are going to have good insurance. I can tell you there are actuaries in those particular outstanding companies. They know whether they are winning or losing. They know where their costs are. But they will not give them to the National Congress.

So, we are flying blind without the truth in a very abbreviated hearing with the arrogant assumption that the people who sent us here to Washington had the good sense and judgment to make you and I a Senator but all of a sudden they have lost their minds when it comes to trying a little law case in the courtroom back home. They are the only ones who have heard the sworn testimony. We have not heard any sworn testimony. All we have heard is from the fixers downtown. When we get to the chairman of the Judiciary Committee to talk about lawyers, we are going to have a good heyday. They have 60,000 downtown in the District of Columbia—60,000 lawyers. I doubt if many of them have ever been in the courtroom. They are all hired to fix you and fix me. They all are lobbyist lawyers to take anything they can for someone. I never heard of such fees around here. A poor fellow gets charged under ethics, and he has to hire a lawyer for $400 an hour to peruse all of his records and start looking at this and what happened 15 years ago, and all of that kind of nonsense.

They do not come cheap. Billable hours is their theme. I practiced law for 20 years and never had a billable hour. If we won the case, we got a fee. If we did not win, that was my responsibility. That is the retainer system. We have many an injured party that is out of work. There is no salary, large medical bills, and everything else. Yes.

I have taken those under a one-third contingent basis. I tell that poor client not to worry about it. I am going to pay for the investigation. I am going to pay for the court costs. I am going to pay for the interrogatories. I am going to pay for the depositions. We are going to pay for the trial. I am going to pay for my time. If it goes up on appeal, I am going to pay for the printing of the record. I will appear before the Supreme Court. And, unless we prevail, you do not owe me one red cent.

That worked in America for the poor folks, middle-class America. That would not work for the middle class, if they had to come under billable hours at $200, $300, $400. I think we maybe ought to have an amendment that we limit billable hours for defense lawyers, not put caps on punitive damages, but let us put caps on billable hours to, let us say, $50 an hour. If we had that, they would be making over $100,000, making as much as a Senator. That is just 40 hours a week for 52 weeks. But if they worked overtime like trial lawyers have to do, then they would make even more money. But they do not want to talk about caps on billable hours.

That is the group of lawyers that are moving this thing. Nobody that represented an injured party is coming to this National Government and saying we have a national problem. They know differently. It is not easy. You have to get all 12 jurors to agree. The defense side has the investigative staff. When the plaintiff prevails, they are not runaway juries. In my State of South Carolina, the trial judge can look and say, such as recently was done in a case in Greenville, ''I do not like that finding under punitive damages. I am ruling out all punitive damages with respect to the actual verdict. Actual damages, I do not believe you should get but so much. You can take this much or get a new trial. One or the other. You can count on that.'' We have responsible, conservative jurors in my State. And I do not know where in the Lord's world the business community thinks this Congress is going to be more conservative and responsible than my State of South Carolina. That is why I feel so keenly about this.

They might have the Gingrich leadership and the contract and the conservative bunch at this particular hour. But give it time. Give it time. This crowd is way more liberal than what we are back home. That business crowd, in the years to come, are going to find that you will trip up on the carpet and go over to the window and get your money. You watch how they move in on you when you get these national trends.

This is not in the interest of business. It is not in the interest of consumers. It is not in the interest of good, sound law, and certainly does not respond to any need other than the political fix that has been worked in here. We have thwarted it time and again, by thoughtful Senators looking at it and understanding. We have a lot of work to do up here in the National Government. But certainly tort reform is not one of the great needs in this land.

We have investors coming from all over the world because they like our system here as compared to the systems they have in their own countries. The particular industries involved, whether chemical, pharmaceutical and all, just under GATT were making profits, their biggest return, and they were being able to compete. Now the purposes of this particular bill is to try to allow them to put on the market certain pharmaceuticals that they are being prohibited from putting on the particular market because of product liability.

It is a false chant and claim that should not be honored in this particular bill before us. The Commerce Committee members, I know them intimately. They know better but they are caught up in this particular jam, and we will have a good debate as we move along.

I do thank my colleagues for their attention here this afternoon.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I understand the distinguished Senator from Utah is here to speak on this bill and I want to allow him to do so. I simply have a mechanical motion to make at this point.

Mr. President, I ask unanimous consent that the other sponsors of S. 565 be added as cosponsors to my substitute amendment: Mr. ROCKEFELLER, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE, and also added as cosponsors of the substitute amendment Mr. HATFIELD, Mr. LUGAR, and Mr. FRIST.

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

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I always enjoy hearing my colleague from South Carolina. He is one of the more intelligent people in this body. He is certainly a great lawyer, and I agree with many of the things he says. In fact, I consider him one of my dearest friends in the Senate and I learned how effective he was many, many years ago as a brandnew, freshman Senator when we worked together on a variety of issues. Nothing would please me more than to always be together, on every issue.

So I just want to say that I have a lot of respect for him. I know that he believes in what he is doing, and that is very important to me.

Mr. President, I am extremely pleased to speak in support of the Product Liability Fairness Act of 1995. As an original cosponsor of this legislation, it has been my pleasure to work with Senators ROCKEFELLER and GORTON, and many others, in addressing the significant issues underlying product liability litigation reform.

I particularly commend Senator ROCKEFELLER and GORTON for the hard work they have gone through in trying to being people together on this very significant bill, and for their longstanding leadership and their dogged pursuit of meaningful product liability reform. It is long overdue. It is my hope that we in the 104th Congress will finally be able to pass some of the needed reforms that the American people have demanded for years.

This act represents a bipartisan effort to correct what many observers have long recognized to be serious malfunctions in our product liability system. This act aims to help American business to grow, to provide more jobs and more affordable consumer goods, to reduce unnecessary and outrageous insurance and litigation costs, and to encourage the medical and technological breakthroughs that benefit the people of Utah and all Americans.

If passed, this act will do that at the same time it ensures that those who are wrongfully harmed by trule defective products are compensated through a prompt, effective system in which the bulk of their compensation will not be eaten up by court costs and attorneys' fees.

Under the current system, however, American manufacturers and others have been forced to devote far too many resources to the costs of product liability actions. Too often those actions have been frivolous attempts to vex and harass American businesses into unwarranted and unjustified settlements. American consumers in all States have had to bear those costs.

PUNITIVE DAMAGES

I have studied these problems and listened to experts, including those who testified at a tort reform hearing I chaired in the Judiciary Committee in early April. I am particularly concerned about the effect arbitrary punitive damage awards have on our economy and civil justice system. They are sought with an alarming frequency that adversely affects our manufacturers, distributors, and retailers with threats of potentially unpayable damages.

Arbitrary punitive damage awards adversely affect consumers. George L. Priest, professor of law and economics at Yale Law School, testified before the Judiciary Committee on April 4. He has taught in the areas of tort law, products liability, and damages for 21 years and has directed the Yale Law School Program in Civil Liability since 1982. He testified as a private citizens, not on behalf of any client. He said, ''The reform of punitive damages alone even reforms that would cap punitive damages or introduce a proportionality cap—will help consumers * * *.'' He added, ''Where punitive damages become a commonplace of civil litigation * * * or even where they become a significant risk of business operations,

consumers are harmed because expected punitive damages verdicts or settlements must be built into the price of products and services.''

We have all heard about astronomical punitive damage awards for spilled coffee and other horror stories. The dollar amounts of those awards have rapidly grown to reach the mind-numbing highs we hear about today. In California, for example, the largest punitive damage award upheld on appeal in the 1960's was $250,000. In the 1970's, the largest award of punitives upheld climbed to $750,000. But in the 1980's, the largest punitive damage award upheld in California soared to $15 million.

It is not simply the amount of the awards that have been granted that is a problem, however. It is the alarming frequency with which punitive and other damages are sought that has a distorting impact on our economy and our civil justice system. Plaintiffs who feel they may hit the litigation jackpot will hold out for large settlements, prolonging litigation and its attendant costs. The mere threat of punitive damage awards raise the settlement value of a case, regardless of its merits.

JOINT AND SEVERAL LIABILITY

Often, this problem is compounded when parties are joined as defendants in the hopes that those parties—as deep pockets—can be forced to cough up a settlement.

I think most Americans have heard about the McDonald's coffee case, in which the jury awarded a tremendous amount of punitive damages to a woman who spilled hot coffee on herself. But how about the McDonald's milkshake case?

In a 1994 New Jersey case, *Carter* v. *McDonald's Corp.*, (640 A.2d 850, N.J. 1994), the plaintiff was injured when his car was hit by another car driven by a motorist named Mr. Parker. Mr. Parker had purchased a milkshake at McDonald's and had placed the milkshake between his legs while he was driving. He inadvertently squeezed his knees together and popped the top off of the milkshake. This spilled the milkshake all over his legs. He became distracted and drove into the plaintiff's car.

I would not argue with the fact that the plaintiff was injured or the fact that Mr. Parker played a key role in that car accident. I would not argue that Mr. Parker should not be liable for any injuries he caused to Mr. Carter through his negligence.

However, in that case, the plaintiff not only sued Mr. Parker, but he also sued McDonald's. You might ask on what theory? He sued McDonald's on a product liability theory. He alleged that McDonald's had sold Mr. Parker the milkshake, knowing that Mr. Parker would consume it while driving and without warning Mr. Parker of the dangers of eating and driving.

Now I do not think anybody would disagree that that is ridiculous. It simply flies in the face of common sense.

Of course, as a matter of law, ultimately McDonald's was legally vindicated and won the case. The New Jersey trial court granted McDonald's a summary judgment and reached the unsurprising conclusion that McDonald's did not owe a duty to its customers to warn them not to eat and drive.

Even that did not satisfy the plaintiff, however, who forced McDonald's to endure an appeal. Again, and not surprisingly, the appellate court agreed with the trial court. But even that still did not satisfy the plaintiff. He sought review in the New Jersey Supreme Court, which eventually denied review.

In the end, and after nearly 3 years of litigation, three levels of courts passed on the case. None of them concluded that McDonald's could be held responsible on that far-fetched theory. But was McDonald's really vindicated?

As that case unfortunately shows, in product liability lawsuits it is too often the case that even a so-called win is a loss. McDonald's had to endure almost 3 years' worth of legal proceedings under a cloud of potentially high damages and had to bear its legal costs. If a corner ice cream shop had sold the allegedly offending milkshake rather than McDonald's, it is highly likely that the milkshake seller would not still be in business today. Does that make sense? Does that benefit consumers? Does it satisfy justice?

Now, it is not unsafe to conclude that the cost to McDonald's of those three levels of trial and appeals was in the thousands and thousands of dollars, all passed on, of course, to you and me as consumers.

The problem with the current product liability environment is that the law actually fosters such abuses by encouraging trial lawyers to file suit against various parties who have little real responsibility for whatever harm is caused. Those trial lawyers do so because they can extract settlements from parties who may not be at fault at all but who may be unable or unwilling to endure the cost and uncertainty of legal proceedings. Those trial lawyers have their own economic incentives to enter these suits: their share will be in the neighborhood of 30 percent or more of whatever they can force the defendants to pay.

Now, I have to say, these are matters that concern me greatly. Frankly, these abuses are encouraged. In fact, it has gotten so widespread that it would almost be malpractice for a lawyer not to claim punitive damages in these cases, because juries have been giving punitive damages, I guess not realizing that all those costs, even though some of them may be paid by third parties, are passed on to consumers in this society. All of those costs are part of the reason litigation is so expensive.

I might add, that same type of reasoning is what is demoralizing America as we watch the O.J. Simpson case go on for months and months of ridiculous histrionics, with attorneys playing PR people outside of the courtroom and with jurors telling the judge what to do. This is ridiculous. I do not know of any other State in the Union that would allow that kind of travesty to continue.

Yet, those are only two things I would mention at this time.

Take another case. This one comes from New York State. [*Kerner* v. *Waldbaum's Supermarket, Inc.*, 149 A.D. 2d 411 (N.Y. App. Div. 2d Dep't 1989)]. In that case, a woman cut her hand while using a knife to separate frozen hors d'oeuvres. She had not allowed them to thaw and was cutting into them when they were frozen. What did she do? She brought a lawsuit. Whom did she sue? She sued the supermarket and the manufacturer and packager of the frozen hors d'oeuvres.

Yet again, all the defendants were ultimately vindicated as a matter of law. The trial court issued a judgment for the defendants, saying in effect that they were not responsible, and that judgment was upheld on appeal.

Again, however, legal vindication was not necessarily justice. It came only after a costly legal defense and lengthy legal proceedings were foisted on the defendants. That is not fair, and it is not just. How can that possibly be called a win?

Cases like these demonstrate the power that can be wielded over individuals or companies who may have at best a tenuous connection to the cause of an injury. Once those parties are named in a lawsuit, they will face significant costs even if they win on the legal merits.

This specter of large and potentially unlimited liability has fueled irresponsible litigation in our country again and again. That is an injustice that we must correct. It is a needless expense our economy cannot afford to bear.

The fact is—whether the terrific sums expended in such litigation come from large awards imposed by juries, from settlements that have been extracted from parties, or from attorneys' fees and costs that are expended in successfully defending lawsuits—those amounts impose a tremendous cost on our economy and that cost crosses State lines.

That cost ultimately hits us most in the impact it has on where those dollars could be going. The moneys spent on litigation are not funds being invested in new research, expanding inventory, hiring employees, rewarding employees, building new facilities, acquiring new equipment, or paying dividends to shareholders. These huge sums are coming from the budgets of small business, individuals, insurance companies, and others every day. If not spent on irresponsible litigation, those dollars could create jobs and spur innovation and research. But, by forcing the reallocation of those dollars away from productive, job-creating uses, product liability lawsuit abuse has created serious interstate economic damage.

The crux of the problem is that all of this harms our economy and our consumers. It removes companies' incentives to invest and discourages them from engaging in research and development of newer and safer products. The threat of expensive and dragged-out litigation raises the risk of innovation.

Moreover, not only does our current tort system limit the amounts companies can spend on wages. research, and technology by increasing the amounts companies must spend on liability insurance and litigation costs, that is, it imposes high opportunity costs, but it also raises the direct costs necessary for a person or company to protect against litigation. In short, the increasing demand for liability insurance and the increasing amounts of the settlements raise the price of the premiums.

The costs that companies must pay to cover their expected liability are passed on to consumers.

Of the price of a simple ladder, for example, a shocking 20 percent goes to paying the costs of product liability litigation; equally appalling, one-half of the price of a football helmet goes to liability insurance. Unnecessary litigation and insurance costs impact the prices we pay for those and all sorts of other goods and services that we need and use everyday.

WHAT SHOULD BE THE ROLE OF CONGRESS?

Critics of this legislation have pointed out that this is an area in which the States should be involved. I do not disagree with that, and I applaud State innovations to curb excessive litigation. However, it has become clear that some of these problems cannot be addressed comprehensively without a uniform, nationwide solution to put a ceiling on at least the most abusive litigation tactics.

This bill addresses a national need and the regulation of interstate commerce. James Madison observed in Federalist No. 42 that the ability of the Federal Government to protect interstate commerce was one of the central facets of the Federal Government's authority and its reason for being. Alexander Hamilton, in Federalist No. 11, agreed with that sentiment when he noted that one of the key purposes of the Constitution was to prevent interstate commerce from being ''fettered, interrupted and narrowed'' by differing State regulation.

I agree that national power has overreached in some areas and has been overly involved in areas in which it cannot be justified. I agree that in many areas the Federal Government has imposed excessive regulatory burdens on the American people.

That is why we are working so hard on a regulatory reform bill that will end that.

It has become evident over the years, however, that Federal action is needed here precisely to protect citizens of some States from the litigation costs imposed on them by other States' legal systems.

For example, the fact that a company may be subject to huge punitive damage awards in one State—say, Texas or Alabama—and none in another State—say, Massachusetts, which outlaws punitive damages unless expressly authorized by statue—has led to a troubling result. The cost of those differing State standards will not be borne solely by those in the respective States.

Plaitiffs' trial lawyers cross State boundaries to bring suits in certain States rather than other States. They seek to join certain defendants just to bring suit in a given State. The higher costs pass directly across State lines in those cases to harm those businesses that are dragged into another State's courts. The fact is that Massachusetts or Utah or any other State may be unable to protect its businesses from suit in other States.

Moreover, in a more pervasive effect, the insurance and litigation costs that are forced on the system by the laws in some States will be passed on to consumers and workers in other States. These harmful effects cannot be contained in one State, nor can the costs be passed on to consumers only in one State or another. Both unpredictability of litigation and the interstate character of markets—whether for insurance, products, or services—has prevented that.

Critics of this legislation are also wrong in contending that the States can address these problems adequately. A number of States have attempted reforms, only to be thwarted by State courts.

Many States have enacted statutes of repose similar to the one included in our product liability bill. Our bill sets a 20-year statute of repose for durable goods. It prevents manufacturers from being sued for old equipment or machinery, and ensures that after a sufficiently long period of time after which the manufacturer has no longer controlled a particular machine or piece of equipment, responsibility will lie with those who are responsible for its use and upkeep.

Unfortunately, State efforts in this area have been thwarted. State statutes of repose have been struck down in at least 14 States based on State constitutional grounds. [*See Berry* v. *Beech Aircraft Corp.*, 717 P.2d 670, 677–678 (Supreme Court of Utah 1985) (citing cases)].

More sweeping efforts have been equally frustrated. In Alabama, tort reform legislation passed by the Alabama State legislature in 1987 required independent court review of punitive damage awards, and placed a $250,000 flat cap on punitive damages for most civil cases. However, in 1991, the Alabama Supreme Court struck down the provision requiring independent court review of punitive damages [*Armstrong* v. *Roger's Outdoor Sports*, 581 So.2d 414 (Ala. 1991)]; and, in 1993, the Alabama Supreme Court ruled that the Alabama Legislature does not have the authority under the State constitution to impose any cap on punitive damages [*Henderson* v. *Alabama Power Company*, 627 So.2d 878 (Ala. 1993)].

Given the inability of State legislatures to carry through on reforms that they conclude are necessary, Federal action in the area is the only viable course through which to attack lawsuit abuses.

The bill corrects a variety of problems, and it does so in a reasonable, modest manner. This is not a radical bill. In fact, it is a very modest bill. It has been criticized for being too modest.

As for the details of how this bill works, the specific provisions of the bill correct certain inequities in the law as it stands and makes those corrections uniform nationwide. At the same time, it allows State-to-State variation of the law within certain protective boundaries so that, for example, States will be free to prohibit punitive damages altogether or take other steps to toughen the law. In that way, the bill seeks to balance and accommodate the State and Federal roles.

The alternative dispute resolution section of the bill, for example, encourages resort to alternative dispute resolution—so-called ADR—by providing procedures through which parties can arrange to go through ADR and by providing for some fee-shifting to any defendant that unreasonably refuses an offer to proceed through alternative dispute resolution.

I have strongly favored using means outside the court system for resolving disputes. This bill encourages the use of those procedures, but leaves it to the States to experiment with providing various sorts of ADR, such as mediation or arbitration, to determine what works best for their citizens.

Other provisions of the bill encourage responsible litigation. For example, the bill contains a 2-year statute of limitations provision. Under that provision, a product liability action must be filed within 2 years of the date on which the injury occurred or on which the plaintiff, in the exercise of reasonable care, should have discovered the injury and its cause.

This requires parties to take action within a reasonable time after they know of an injury and its cause. It will prevent late-in-the-day lawsuits, like one that was filed in my own State of Utah.

In that suit, the plaintiff purchased a Cannondale bicycle from the Bicycle Center on Salt Lake City in July 1986. In August 1986, the plaintiff fell off the bicycle when, he claimed, it suddenly stopped. Now, at that point, he knew he was injured and knew that his injury was caused by falling off the bike. However, it was not until 3 years later, in August 1989, that he filed suit against Cannondale and against the bike shop.

The plaintiff acknowledged in court papers that he did not think of filing

suit at the time of the accident. He admitted that he only became interested in litigation after seeing a report on television about a successful personal injury lawyer from San Francisco. That was the sole reason explaining why the lawsuit was delayed for so long.

I have nothing against parties seeking representation of counsel and getting legal advice so they know what their legal rights are. And I have nothing against the plaintiff being compensated for his injuries if the bicycle manufacturer and the bicycle shop really were at fault.

However, I do have a problem with lawsuits driven solely by aggressive trial lawyers rather than by real people who face real injuries for which they deserve compensation. Potential defendants should not be forced to wait for a prolonged period of time with no idea that an injury may have occurred involving a product they made or sold. When that happens, key employees with relevant facts may have moved on, memories may have faded, and records may be lost or discarded.

Even if defendants can successfully defend such suits on the merits, as occurred in the Utah case, substantial litigation costs are once again incurred.

This product liability bill includes numerous other provisions to encourage responsible litigation and to ensure that liability is imposed only on truly responsible parties rather than on whatever deep pocket a plaintiff's attorney thinks can be picked successfully.

To that end, for example, the bill imposes liability on product sellers—rather than manufacturers—only under certain circumstances in which the product seller actually is responsible for the safety of the product it sells. If, for example, the seller fails to exercise reasonable care with respect to a product and in so doing causes an injury, then the product seller may be liable. A product seller should not be able to be held hostage to a lawsuit, however, where the damage is the responsibility of the manufacturer and where the plaintiff can and should be suing the manufacturer.

Along similar lines, the bill provides that those who rent or lease products should only be liable in situations similar to those in which product sellers can be liable—that is, where they themselves have actually been negligent or otherwise responsible for the harm and not where they are simply in the chain of supply and have done nothing wrong.

Likewise, liability against biomaterials suppliers—who supply raw materials for use in life-saving and life-enhancing medical devices—is also limited to apply only in circumstances where the raw material supplier should be responsible for the ultimate end use of the material, for instance, where it supplied material in accordance with certain specifications and the material did not meet those specifications.

The bill also provides a defense if the injured party was intoxicated or under the influence of drugs at the time of the accident and if the intoxication or drug-use was more than 50 percent responsible for the harm caused.

The bill reduces damages if harm is caused by any misuse or alteration of the product. And, the bill provides that an employer may not be able to recover from a manufacturer any workers compensation benefits that the employer paid out to an injured employee if that employer was, in fact, responsible for the harm—for example, if the employer encouraged the worker to operate a machine improperly.

In another provision that places responsibility where responsibility should lie, the bill limits joint and several liability. Under joint and several liability law as it stands in many States, manufacturers and others in the chain of production can be held responsible for striking amounts of damages for harm that they did not cause—just because another defendant cannot or will not pay its fair share.

How is it fair that a party judged to be only 30 percent at fault pays 100 percent of the damages? This bill strikes a fair balance by providing that joint and several liability in product liability cases, in State or Federal court, is limited only to economic damages. Thus, an injured person will always be ensured of receiving full compensation for economic loss so long as some defendant who is legally liable is capable of paying that loss.

As to noneconomic loss, the bill provides that responsible parties will be responsible for covering that share of the loss for which they are responsible. This fairness approach means that defendants will for the most part be responsible for the harm they cause rather than the harm of other defendants.

As one final point, I note that the threat of having to bear responsibility for harm caused by another party is not the only threat that has skewed the incentives in our legal system. The possibility of exorbitant punitive damages awards has grown so that it effectively amounts to legalized extortion.

The threat alone of excessive punitive damages forces parties to settle under conditions in which they otherwise would not. We need to put an end to extortion by litigation and curb practices further harming our economy and threatening our small businesses with claims that exceed their net worth.

In my own view, limitations on punitive damages should apply to all civil actions—not just product liability actions. Volunteer organizations, blood banks, restaurants, and everyone else subject to punitive damages deserve these commonsense safeguards. And, whether businesses face product liability lawsuits or some other civil lawsuits, the same harm is done to our economy, our interstate commerce, and to our society.

If businesses face outrageous punitive damage awards in some States, they must impose the increased litigation and insurance costs on consumers in all States. Likewise, the costs to workers are passed on throughout the Nation when a company must defend outrageous claims in one State and then has correspondingly fewer resources to spend on expansion and growth in other States. That occurs whether the lawsuits are product liability actions or are fraud, breach of contract or other types of civil lawsuits.

I intend to join Senator DOLE and others in seeking adoption of an amendment to address these matters.

Similarly, I believe the joint and several liability reform in this bill should be extended to all civil actions.

I hope that we will soon consider addressing those problems as debate on this legislation progresses. Again, I thank Senators ROCKEFELLER and GORTON for their leadership and commend them for their efforts.

I yield the floor.

Mr. GORTON. Mr. President, I want to thank and congratulate my friend from Utah not only on his support, but on his eloquence and on his understanding of the values involved in this debate and for his eloquent statement of the case for this bill.

I believe that we will have several other opening statements during the course of the afternoon. And my friend and colleague, the primary cosponsor of the bill, the Senator from West Virginia, will be here momentarily. I believe the Senator from Kentucky [Mr. MCCONNELL] wishes to speak.

I will make only one brief comment with respect to the position stated by my friend, the Senator from South Carolina, and that has to do with the alleged inconsistency of believing that it is appropriate to delegate some responsibilities on which Congress has done a poor job to the States, while to a certain extent providing for uniform rules with respect to product liability. If the position of the Senator from South Carolina is that it is appropriate to delegate those other responsibilities and inappropriate to federalize these and that had been the position of those who wrote the Constitution of the United States, I suppose we would still be operating under the Articles of Confederation.

But, Mr. President, those who did write our Constitution expressly gave to Congress control over interstate commerce. That is an express line, an express section in the Constitution of the United States. It is up to the Congress to determine the degree to which interstate commerce is so implicated in a particular business or profession as to not only authorize but perhaps to require legislation at this level. And it is very difficult, Mr. President, to think of a single field in which interstate commerce is so important as it is

in the manufacture and distribution of actual hard goods in our national economy.

It really does not matter in the American system whether or not goods are manufactured in South Carolina and sold in the State of Washington or in the State of Minnesota, or manufactured in the State of Minnesota or Washington and sold in South Carolina. Almost every significant manufacturer sells its goods in every State in the country. As a consequence, the burden of a legal system which encourages litigation in which results are likely to be dramatically different in one State than in another—a fact, incidentally, known to most trial lawyers who see, obviously, the most favorable forums for their litigation—calls for a degree of uniformity. The desire that American industry be more competitive, the desire that American industry spend freely on research, the desire that American industry develop products as a result of that research, the desire for the kind of competition which causes lower prices to consumers is obviously in the national interest. When it has been demonstrated so dramatically that the present system discourages research and development, it causes many manufacturers that abandon particular fields, sometimes totally and sometimes leaving them to monopolies or quasimonopolies. When consumer prices in certain areas are so adversely affected, it is appropriate that we seriously consider whether or not we cannot consistently, with justice, provide for a more uniform system than we have at the present time.

Does this bill entirely nationalize it? No, of course not. It would be inappropriate to do so. Does it make it more uniform? Yes, Mr. President, it does. That has no more relevance to whether or not we should continue to maintain a nationalized welfare system or perhaps a myth that it has been a failure and that we need State experimentation. There is no relevance between the two. Each should be judged on its own merits. This should be judged on its own merits. And to say that there are somehow or another seventh amendment of the Constitution implications, again, Mr. President, seems to me to be an equally bizarre argument.

Every jury is subject to the law. Every jury is instructed as to what the law is. Juries are instructed on the degree of the burden of proof and the like, and juries determine facts. Nothing, not one line, not one phrase of this bill, deprives any jury of the right to determine matters of fact which come before it. It sets up a framework—we believe a just and balanced framework—for one relatively small but vitally important field of litigation, perhaps the single field of litigation in which interstate commerce is most implicated. It does that, and it does that in a way which does not deny justice or full compensation for any injury subject by reason of the negligence of a manufacturer, Mr. President.

There are no caps in this bill on compensation, on compensatory damages of any kind. But it does make somewhat more predictable the course of litigation, somewhat lowers the cost of litigation. And, Mr. President, I suspect that no actual victim is likely to suffer at all. But I am convinced that the transaction costs for lawyers and expert witnesses and the like, which now eat up way more than half of all of the money that goes into the product liability system, that those transactional costs will be significantly lessened by the passage of this bill.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

PRIVILEGE OF THE FLOOR

Mr. HOLLINGS. I ask unanimous consent that the privilege of the floor be granted to the following members of the Senators staffs. I send the list to the desk.

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

Mr. HOLLINGS. Mr. President, what you have is, as the Senator from Washington just talked about, punitive damages. You have a procedure whereby you might have willful misconduct, but under this particular section, 107(2):

> Inadmissibility of evidence relative only to a claim of punitive damages in a proceeding concerning compensatory damages. If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages as determined by applicable State law, shall be inadmissible.

That tells you they have really worked this measure over, and they want to keep out the evidence in the regular trial of a case of willful misconduct. They want to keep that out of the attention of the jury hearing the case.

Right to the point of punitive damages, Mr. President. I have listened to Jonathan S. Massey, an attorney who testified in our recent hearings as having handled punitive damage awards before the U.S. Supreme Court. I asked him, ''You know, I was just thinking that the award of punitive damages in the Pennzoil versus Texaco case of $3 billion in punitive damages, how did that compare to all product liability cases?''

Just go back 30 years to 1965 and see what we really can find out. I ask unanimous consent to have printed in the RECORD a letter to me, along with punitive damage awards from 1965 to the present.

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

APRIL 13, 1995.

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

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

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

I hope this information is of assistance.

Sincerely,

JONATHAN S. MASSEY.

PRODUCT LIABILITY PUNITIVE AWARDS, 1965–PRESENT

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

AK, 2 cases, $2,520,000; 1 additional cases with unknown amounts.

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

AL, 1 cases, $25,000,000; 0 additional cases with unknown amounts.

AK, 1 cases, $1,000,000; 0 additional cases with unknown amounts.

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

CA, 17 cases, $35,854,281; 9 additional cases with unknown amounts.

FL, 1 cases, $1,000,000; 0 additional cases with unknown amounts.

CT, 1 cases, $688,000; 0 additional cases with unknown amounts.

FL, 1 cases, $519,000; 0 additional cases with unknown amounts.

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

FL, 1 cases, $750,000; 0 additional cases with unknown amounts.

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

CO, 3 cases, $7,350,000; 1 additional cases with unknown amounts.

CT, 0 cases, $0; 1 additional cases with unknown amounts.

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

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

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

FL, 2 cases, $3,500,000; 0 additional cases with unknown amounts.

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

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

ID, 0 cases, $0; 1 additional case with unknown amounts.

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

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

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

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

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

KS, 7 cases, $47,521,500; 1 additional case with unknown amounts.
KY, 2 cases, $6,500,000; 0 additional cases with unknown amounts.
LA, 2 cases, $8,171,885; 0 additional cases with unknown amounts.
ME, 3 cases, $5,112,500; 0 additional cases with unknown amounts.
MD, 3 cases, $77,200,000; 2 additional cases with unknown amounts.
MI, 2 cases, $400,000; 0 additional cases with unknown amounts.
MN, 4 cases, $10,000,000; 1 additional cases with unknown amounts.
MS, 4 cases, $2,790,000; 1 additional cases with unknown amounts.
MO, 9 cases, $20,785,000; 1 additional cases with unknown amounts.
MT, 2 cases, $1,600,000; 1 additional cases with unknown amounts.
NV, 1 cases, $40,000; 1 additional cases with unknown amounts.
NJ, 4 cases, $900,000; 5 additional cases with unknown amounts.
NM, 4 cases, $1,715,000; 1 additional cases with unknown amounts.
NY, 7 cases, $6,019,000; 6 additional cases with unknown amounts.
NC, 2 cases, $4,500,000; 0 additional cases with unknown amounts.
OH, 6 cases, $4,395,000; 1 additional cases with unknown amounts.
OK, 6 cases, $15,390,000; 1 additional cases with unknown amounts.
OR, 3 cases, $62,700,000; 0 additional cases with unknown amounts.
PA, 5 cases, $16,298,000; 8 additional cases with unknown amounts.
RI, 1 case, $9,700,000; 0 additional cases with unknown amounts.
SC, 5 cases, $2,945,500; 4 additional cases with unknown amounts.
RI, 1 case, $100,000; 0 additional cases with unknown amounts.
SD, 1 case, $2,500,000; 0 additional cases with unknown amounts.
TN, 4 cases, $4,720,000; 3 additional cases with unknown amounts.
TX, 38 cases, $217,098,000; 19 additional cases with unknown amounts.
UT, 1 case, $300,000; 0 additional cases with unknown amounts.
VA, 2 cases, $340,000; 0 additional cases with unknown amounts.
WV, 3 cases, $2,433,100; 4 additional cases with unknown amounts.
WI, 7 cases, $10,622,000; 4 additional cases with unknown amounts.
FL, 1 case, $2,500,000; 0 additional cases with unknown amounts.
WI, 2 cases, $26,000,000; 0 additional cases with unknown amounts.
DC, 1 case, $2,500,000; 0 additional cases with unknown amounts.
Grand total 270 cases, $953,073,079; 109 additional cases with unknown amounts.
Average punitive award; $3,529,900; Extrapolated total of all awards, $1,337,832,211.

Mr. HOLLINGS. Mr. President, that goes right to the heart of what they are really concerned about. They are concerned about these manufacturers making more money. They are not concerned about punitive damages. If they were concerned about punitive damages—and we will list, when we have more of the Senators in town here that are not present here on this Monday afternoon, we will list the punitive damage awards with respect to these corporations suing corporations.

My understanding of punitive damages is willful misconduct. But if there is an abuse of the awards of punitive damages to justify this national concern, it would be at the manufacturer or the business or the contract level, not that of individuals injured on account of the defective product bringing their cases in tort for product liability. There is no question about it.

Now, the distinguished Senator points out how he is concerned about consumers. He says this money goes to consumers, consumers, consumers. I refer to the distinguished chairman of our Judiciary Committee, the Senator from Utah, my good friend, for whom I have the greatest regard.

We have listed and already put into the RECORD certain organizations, and among those organizations opposing S. 565, is the American Council on Consumer Awareness, the Arizona Consumers Council, the Coalition for Consumer Rights, the Consumer Federation of America, Consumer Federation of California, Consumers for Civil Justice, Consumers League of New Jersey, Consumer Protection Association, Consumers Union, Florida Consumer Action Network, Massachusetts Consumer Association, Michigan Consumer Federation, the National Consumers League, the New York Consumer Assembly, the Oregon Consumer League, Pennsylvania Citizens Consumer Council, and it goes right on down to Virginia Citizens Consumer Council. I can keep reading on and on.

Every responsible consumer organization in this country opposes this bill. So we should not say that we are trying to protect consumers with this particular measure. The sponsors are trying to make more money for the manufacturer. They are not looking after consumers. Consumers know differently.

As the distinguished Senator from Utah points out in his studied presentation, in the prepared comments—I know, as the Senator knows, how we get these prepared comments. Senators tell the staff—and he has a Judiciary Committee staff and a personal staff—''Get out and find the most horrendous cases. I want to take these trial lawyers and put them to rout, and I want to find the most egregious kind of claims that can be thought of so in my prepared remarks I can show there is a national need.''

Heavens above, look what he comes up with. If I try a law case I would win before a fair jury.

This is a fixed jury, the U.S. Senate, Mr. President. This jury is fixed. We have 60,000 lawyers downtown here—billable hours—they come in and lobby for fixes. But if I had an unfettered jury and found out that the best of the best, the chairman of our Judiciary Committee, that conducted hearings, came up with the milk shake case of 1994 and found out it went all the way to the Supreme Court of New Jersey against McDonald's, and they were vindicated, that tells me that there is an incompetent lawyer or he has nothing else to do. I know unless I have a pretty good, strong case, I am not going to be bringing suits and appealing all the way about ''a milk shake that popped the top open as I put it between my legs as I drove off from McDonald's.'' I have real work to do.

That case is in my favor. That shows the law is working, and it is working in the State of New Jersey. One other case he had, and that was a New York State case in 1989, and again the defendant was vindicated.

Now, is that the best they can bring to the U.S. Senate on a national need? Come on here, we can cite cases like contracts, if we want to. We will list a few of them. We have that, if that is the basis on which they want to argue.

Here in 1989 Uncle Ben's sued General Foods over advertisements claiming that Minute Rice outperformed Uncle Ben's in the slotted spoon test.

In 1989, Walt Disney Co. sued to force a public apology from the Academy of Motion Pictures, Arts, and Sciences, for an unflattering representation of Snow White in the opening sequence of the 1989 Academy Awards ceremony.

In 1987, Kellogg filed a $100 million suit against General Mills arguing that Post natural raisin bran was not natural as advertised because it is coated with coconut oil and that comparative television ads were misleading because ''extraneous material that would cling to the raisins had been cleaned off.'' Here is Kellogg suing General Mills. People here are talking about individuals bringing ridiculous suits—look at these cases here. I think we ought to look at these manufacturers.

Mr. CRAIG assumed the chair.

Mr. HOLLINGS. In 1986, the producer of Minute Maid Orange Juice, Coca-Cola, sued Procter & Gamble, charging that ads for Citrus Hills Select falsely claimed that the juice was made from the heart—heart—of the orange.

In 1982, McDonald's sought a temporary restraining order to prevent the airing of ads comparing McDonald's Big Mac unfavorably with the Burger King's Whopper.

Come on. Is that what we are going to consider? We have work to do up here. The plea here about the interstate commerce clause, taken at the Senator's insistence, just repeals the 10th amendment and the responsibility of the several States for tort litigation. I agree with him. I agree with him. Let us extend the interstate commerce clause. But let us extend it to insurance companies which are, all of them, engaged in interstate commerce. I had one, an insurance company before the Securities and Exchange Commission. I guess the year was around 1960 or 1961. I know Manny Cohen was the Chairman of the Securities and Exchange Commission. And I asked that that company be able to operate in several States. I got it approved in 13 days. I know about interstate commerce and insurance.

I can tell you here and now, you put in a bill—if you want to see the insurance lawyers all fill up that hall outside, put in there, under the interstate

commerce clause, an Insurance Commission for the United States of America, and say, ''Quit having to file your policies and hire lawyers racing around to the capitals of 50 States, every one of your policies must be justified and administered in that particular State under that particular law; what we are going to have is uniformity. We are going to have a Federal Insurance Commission.'' Oh boy, talk about acting under the interstate commerce clause—you will see them fight it.

We have to expose this fraud that has been going on for 14 to 15 years. Jerry Ford was right. President Ford put it to the study commission and he said leave it to the States. In the 15-year period, the States have all acted and they have revised their laws and come up with responsible provisions as time evolves with respect to the conduct of product liability litigation. But it is certainly not a national problem. This thing about competitiveness, it is just totally out of whole cloth.

I have been in the game, and we can name the industries, one after the other. Not long ago, I was at Bosch, which is a German company that is located just outside of my hometown of Charleston, SC. They have a 10-year contract to make the antilock brakes for all the General Motors cars. They make the antilock brakes for the Toyota; they make the antilock brakes for the Mercedes-Benz—foreign cars as well as domestic.

When you go in to inspect their plant, they put covering over your shoes and a smock all the way around that you have to wear over your clothing, and a headpiece to make sure no dust or any kind of solutions come from your hair into their particular product. In fact, it is much like going through a pharmaceutical company, or film. Incidentally, I got Fuji Film in South Carolina, and Fuji Film from Japan is now doubling the size of their plant. They have had one there for the last 10 years. Now they are doubling the size. They are not worried about product liability.

But I turn to the Bosch man—because we are awfully proud. I put in a system for technical training and have expanded upon it by sending my teams, having graduated, to Munich, Germany, where they—in this particular case, Stuttgart—go over the German apprenticeship system and then instruct the employees in the German apprenticeship system in my own backyard.

I know about productivity. I said to the gentleman who is the head of Bosch there, ''What about product liability?''

He said, ''Senator, what is that?''

I said, ''Product liability claims; have you had any claims against any of these antilock brakes for defective brakes?''

''Oh, no, no,'' he said. ''We have never had a claim.''

He said, ''If we did—'' he reached over and pulled one off the line. He said, ''Do you see this little number?'' He said, ''We mark every one of those brakes on every wheel on a car. We have a number. We would know immediately, if there was a defect, where it comes from.''

That, Mr. President, is the quality production that has been brought about by trial lawyers. They can cuss them; they can fuss. They can talk about getting the fees. These cases read by the distinguished Senator from Utah, the two cases he had, one in New York, for the supermarket; and in New Jersey, for McDonald's—those lawyers did not get a red cent. They wasted 3 years in time. Lawyers do make mistakes. I guess they made a mistake. But do not put that down as a reason for nationalization of product liability up here at the Washington level.

What happens here is that we have quality production. Companies have come south to my State, having learned you have to really be outgoing toward your employee force—I have watched with a certain amusement over the years, where we called them workers; then we called them employees; now we have to call them associates. You do not dare refer to the work force other than as associates. Rather than the head of the plant parking right up at the front door, they have the Associate of the Month. He parks up at the front door, or she parks up at the front door, and the manager of the plant parks way down in the boondocks. They know how to do it.

When they eat—and I have eaten in these restaurants; they do not have a Senators' eating place, and the regular folks eating otherwise, like we have here. Oh, no; this is not on productivity up here. They all eat in the same restaurant. Yes, we know about productivity.

All of that has come about by not only the treatment of the work force on the one hand, but the absolute care that has come about in relation to the Occupational Safety and Health Act: safe machinery; safe working place; and, yes, the assumption that the product, for whatever particular use it is designated, is going to be a safe product. We can count on that. That housewife does not have to run home and test it on her children and see if it is going to blow up in their faces or make them sick or any of those other things. We count on it in our society and it has worked and is working, and is working well.

To come now with this charade here that has been going on for 14 years, because they can grab us Senators up in campaigns and say, ''Are you for or against product liability?'' and get 15 organizations, the Business Roundtable, the chamber of commerce, and they are all coming in and saying, ''Are you going to be for that product liability?'' Product liability? You are interested in votes, and trying to move on and get something done. And so, yes, you say so, and that ends that. And I am having to talk against a fixed jury.

But I hope some of them are listening and someone will engage in the debate as we have over the past 15 years so that we can hold up this bad mistake. Because if we make this mistake relative to product liability, then we should federalize medical malpractice; we should federalize automobile wreck cases; we should federalize the whole thing. Then we will have to build some more courthouses.

I think we just cut the construction money for courthouses. But let us—in the name of trying to bring down the size of the Government here in Washington, and the bureaucracy—let us build some more courthouses. Let us get some more Federal judges. We can all give them a lifetime job, we Senators. And we can have more clerks of court. Man, I am telling you, we have a growth industry up here. The best way I know to get this growth industry going is to federalize product liability.

It is a sham. It is a bad mistake. The American Bar Association opposes it absolutely. They came up again and testified against it. All the different consumer organizations are against it. Yet the sponsors come here and act like they are for the consumers. They know differently. The State legislatures that handle this problem, the Conference of State Legislatures, testified against it; the Conference of State Supreme Court Justices is against it.

Later on I will include in the RECORD more than 100 deans and law professors from over the entire country who will go into detail and analyze this particular bill, and show how instead of this really giving uniformity it gives complexity, and how, instead of saving money and the procedures and the bureaucracy, it increases it. And if they have such a thing as the lawyers' full employment act, this would be the one because you have all kinds of motions to make now under this particular bill and meetings to be had, and everything else of that kind at the Federal level and at the State level. It is just fundamentally flawed; bad law. They know it, and they try to doctor it up so they can get this into a particular conference committee. And then, of course, go right into what they call the English rule that they have over in the House bill.

That really shows how garish this Congress can get; to take a system where people without means can have their day in court in civil litigation and now are going to be denied, which I myself have taken on as a trial lawyer. Let me divert for a second.

Let me say I represented the bus company or the South Carolina Electric and Gas. So I represented the defendant in numerous cases of tort claims as well as plaintiff. But tell the average citizen who cannot pay for billable hours, and tell them they have no claim? And, yes. We had the contingent basis whereby, as I reiterated and I reiterate because I cannot emphasize it too much, I take on the cost as a

trial lawyer. I assume that for the investigation, for the interrogatories, for the discovery proceedings, for the actual trial, the settlement, conferences that we had, the actual trial of the case, the appeal, the printing of the briefs, the appearances, the entire time spent. Yes. These cases take—in serious cases—2 or 3 years to get them finally determined. This trial lawyer assumes all of those costs. If I win, I get a third. If I lose, I get nothing. I paid those costs. That is the system that has worked.

If you are going to have the loser pay all, I am going to say, ''Now, wait a minute. I have a wife and children. Now I have grandchildren. I like to help. But unless you can get me a bargain and assume the cost, I cannot go totally broke in this business. I have to have you take care of the costs in case we don't prevail. I think you have better than an even chance to prevail.''

However, I never can tell in the draw of a jury. That is what Judge Ito is having to deal with now, the mindset of jurors. I cannot tell the mindset. They could come in with selection of a jury, and I not know it and they have some peculiar feel or prejudice, and I get 11 but I do not get that 12th juror. I end up losing the case, and I have to pay it all. I think that at least you ought to be able to take care of your costs if you believe in your case that much. Yes. That is the day in court, the trial jury.

The distinguished Senator from Washington says they all get their trial by jury. But you read this bill based on what evidence can be submitted, you read the test to be used and the thrust that they have and how they allocate some of these provisions not to manufacturers. You can read on page 36, line 7, ''actions excluded.'' Here is the unmitigated gall of this draftsmanship.

Actions for damage to product or commercial loss, a civil action brought for loss of, or damage to, a product itself, or for commercial loss, shall not be subject to the provisions of this title governing product liability actions but shall be subject to any applicable commercial or contract law.

The States have their volition as to the Uniform Commercial Code and how much and how they interpret it. They have their volition in the 50 States as to contract law. Yes. When it comes to manufacturers under this particular section, yes. We believe in States' rights there. But when it comes to injured parties, you do as we say to do. They talk about a fair and balanced reasonable bill. Come on. They know better. They can read. We pointed this out at the hearings. They had no excuse for it. We pointed it out at the markup. They continue to insist upon it, and we will have amendments. We will have to come along I guess, if they get cloture because they do not want to have debate. They will have to have these amendments and we will have to vote on them.

But I think the original document itself is a pretty good example of what they have in mind. It is not a balanced bill. They had no caps heretofore in previous Congresses on punitive damages. They have it in this one. They say they are going in a reasonable fashion, a more restrictive fashion. They have the misuse provision in here now that they never had before in the three previous Congresses. We will be able to go down on those things and see if they want to insist upon them.

But I can tell you what we ought to do, in this Senator's opinion, is table this bill and move on to those problems that are national problems. The State of Idaho is looking out for its people. It has a Governor. It has a legislature. It has juries that are sworn to listen to the facts and bring in a verdict in accordance with the facts. It has the option of the trial judge to set aside punitive damages, to restrict the actual damages.

I am sure the States of Idaho, South Carolina, and Washington would much rather have its law than a national law up here wherein they think, yes, with the Contract With America crowd in town, that we are going to start being conservative. I can tell you here and now, that might last for a little while. But after a few years go you are going to find the liberal National Government—which has been persistent throughout the years as compared to the State government, State law, and State practices in tort, and with respect to criminal law and otherwise—you are going to find there is a much more conservative government at the State level, and more responsible in my opinion, than the National Government.

We do not have a national problem. That is the point. Yet. They have really been on a roll up here for big industry and against the individuals. They know how to handle the lawyers downtown.

I hope to have perhaps an amendment on the interests of companies. Perhaps we ought to have that, and maybe some of my distinguished colleagues would like to sponsor an amendment on billable hours in addition to caps on punitive damages. Let us have caps on billable hours here in this town. Let us see if that lawyer crowd that is out trying to fix the U.S. Senate can go back to work and try their cases in court before a jury of 12 jurors without meddling with the State precedents here in the United States.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. 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. PELL. Mr. President, I ask unanimous consent that I may proceed as if in morning business.

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

COMMEMORATING THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. PELL. Mr. President, every year at this time, people of Armenian descent throughout the world commemorate the anniversary of the genocide perpetrated against the Armenian people between 1915 and 1923. This tragedy is one of the most horrible in the history of humankind, yet it is often overlooked.

Eighty years ago today, on April 24, 1915, the Ottoman Empire launched a systematic campaign to eradicate the Armenian people from Ottoman territory. In that year, hundreds of Armenian religious, political, and intellectual leaders were rounded up, exiled, and murdered. During the next 8 years, an estimated 1.5 million Armenians were killed through executions, during death marches, or in forced labor camps. Many women, children, and elderly people were raped, tortured, or enslaved. In addition to those killed, an estimated 500,000 Armenians were exiled from the Ottoman Empire, many of whom found their way to freedom in the United States.

Recently, the campaigns of ethnic slaughter in the former Yugoslavia and Burundi have focused much attention on crimes against humanity. Silence in the face of genocide effectively encourages those who would commit such atrocities in the future. As the horrors in Bosnia and Burundi demonstrate, ethnically based campaigns of murder are still possible, even as the world approaches the 21st century.

Mr. President, despite a long history of persecution and tragedy, the Armenian people have demonstrated remarkable moral strength, resilience, and pride, as demonstrated by the successes of Armenian-Americans and the great contributions they have made to our society. These qualities are also evident in the effort of the newly independent state of Armenia to build a prosperous and democratic country after decades of Soviet oppression, and despite the ongoing conflict with Azerbaijan—an effort which I personally witnessed when I visited Armenia in January 1992.

During the last year, there have been some hopeful signs with regard to the conflict between Armenia and Azerbaijan—most notably the implementation of a cease-fire. I hope that the memory of the Armenian genocide, as well as the sight of the suffering of the Armenian and Azeri peoples, will spur a peaceful resolution to the dispute.

The legacy of the Armenian genocide has not succeeded in deterring subsequent acts of genocide. However, it is

only by continuing to remember and discuss the horrors which befell the Armenian and other peoples that we can hope to achieve a world where genocide is finally relegated to the realm of history books, rather than newspaper headlines. I hope my colleagues and leaders throughout the world will join me in commemorating the anniversary today, and thus ensure that the tragedy of the Armenian genocide will not be forgotten.

DIMINISHING PROSPECTS FOR PEACE IN THE BALKANS—A FOREIGN RELATIONS COMMITTEE STAFF REPORT

Mr. PELL. Mr. President, during the recess, two members of my Foreign Relations Committee staff traveled to Croatia, Bosnia, and Serbia to examine the wide range of issues related to the conflicts in the region, and their implications for United States policy.

The situation in Bosnia is unraveling quickly, and with the Senate likely to consider legislation concerning Bosnia in the coming weeks, I think it is important for my colleagues to be aware of the staff's findings.

Among other things, the staff found that as the situation in Bosnia deteriorates, the United Nations may be forced to withdraw from Bosnia and Croatia for any number of reasons, including: a worsening security situation, a shortage of world food stocks, a loss of local employees to the draft, or a lifting of the arms embargo.

The United States has pledged to participate in a NATO effort to withdraw U.N. troops. According to the staff report, a NATO operation in Bosnia would be costly, would require a long lead time, and would likely occur under hostile circumstances. The report finds that NATO is not prepared to extract U.N. troops immediately should that become necessary.

The report also raises some serious questions about the federation agreement between Bosnia's Croats and Moslems as well as about Croatia's intentions. It questions the prospects for peace negotiations regarding the Serb-held Krajina region of Croatia.

Finally, the report finds that Serbia is continuing to fuel both the Krajina and Bosnian Serb war machines. Despite this fact, last Friday, the United Nations voted to extend sanctions relief for 75 days. The report recommends that the United Nations resist further sanctions relief until Serbia ends all assistance to the Bosnian and Krajina Serbs.

Mr. President, as I mentioned, we may be asked next month to vote to life the arms embargo against the Bosnian Government. I believe that the staff report may be a useful resource as we move into the debate. Accordingly, I ask unanimous consent that the key findings of the report be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, April 24, 1995.

Hon. JESSE HELMS,
Hon. CLAIBORNE PELL,
Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR SENATOR HELMS AND SENATOR PELL: On behalf of the Committee on Foreign Relations, we travelled to Croatia, Bosnia, and Serbia from April 7 through 15 to examine the wide range of issues related to the conflicts in the region, and their implications for U.S. policy.

In Croatia, we visited Zagreb, Osijek, and in Sector East, Vukovar, the border crossings at Batina Bridge, Lipovac, and other areas. We visited Mostar, the largest city in the part of Bosnia controlled by the Muslim-Croat federation. We were unable to visit Sarajevo as planned due to the closing of the Sarajevo airport as our plane was enroute to the city. The airport remained closed throughout our visit to the region. In Serbia, we visited Belgrade and the Sremska Raca border with Bosnia.

We met with Croatian and Serbian government officials, opposition leaders, religious leaders, foreign and local journalists, academics, local citizens, military and civilian representatives of the United Nations Protection Force (UNPROFOR), the United Nations High Commissioner on Refugees (UNHCR), NATO, and of international and local non-governmental organizations. We also met representatives of U.S. and foreign embassies, the European Community Monitoring Mission (ECMM), Sanctions Assistance Monitors (SAMs), and monitors of the International Conference on former Yugoslavia (ICFY).

We are grateful to Ambassador Peter W. Galbraith and his staff in Zagreb as well as to Rudolph Perina, the U.S. Chief of Mission and his staff in Belgrade. Their cooperation was instrumental to this report. We would particularly like to thank Foreign Service officers Rick Holtzapple, Andrew Hamilton, and Madeline Seidenstricker as well as Tim Knight, of the Disaster Assistance Response Team (DART), for their able assistance.

The conclusions in this report are our own, and do not necessarily reflect the views of the Committee on Foreign Relations or its Members.

Sincerely,

EDWIN K. HALL,
Minority Staff Director and Chief Counsel.
MICHELLE MAYNARD,
Minority Professional Staff Member for European Affairs.

SUMMARY OF KEY FINDINGS

The situation in Bosnia is unraveling. The Bosnian Serbs are responding to recent limited Bosnian Government military gains with brutal attacks against civilians and U.N. peacekeepers.

The United Nations may be forced to withdraw from Bosnia and Croatia for any number of reasons, including: a deteriorating security situation, a shortage of world food stocks, a loss of local employees to the draft, or a lifting of the arms embargo.

The United States has pledged to participate in a NATO effort to withdraw U.N. troops. A NATO operation in Bosnia would be costly, would require a long lead time, and would likely occur under hostile circumstances. NATO is not prepared to extract U.N. troops immediately should that become necessary.

Croatia is supporting a federation between Bosnian Croats and Muslims as a means to retake Serb-controlled territory by force and to annex Hercegovina.

Croatia's military strategy, if continued, will make impossible the successful conclusion of peace negotiations and lead to full scale war in the Serb-held Krajina region of Croatia.

The agreement bringing an end to fighting between Bosnian Muslims and Croats was a tremendous achievement for U.S. diplomacy. That being said, however, Croats and Muslims have made no progress in implementing a political and economic alliance. Despite significant U.S. and European financial and political support for the Bosnian federation, prospects for such an alliance appear dim.

Serbia is continuing to fuel both the Krajina and Bosnian Serb war machines. The land border between Serbia and Bosnia may be ''effectively closed'' as called for by U.N. Security Council Resolutions 943 (1994) and 970 (1995) but oil, military equipment, and other sensitive material pass daily from Serbia through Croatia's Sector East and into other parts of Serb-held Croatia and Bosnia. The United Nations recently voted to extend sanctions relief for 75 days. It should resist further sanctions relief until Serbia ends all assistance to the Bosnian and Krajina Serbs.

International sanctions against Serbia and Montenegro are not working. Belgrade is awash in consumer goods; gasoline costs less than it does in Germany; and Serbia's basic infrastructure continues to function.

Sanctions against Serbia appear to have strengthened rather than weakened President Slobodan Milosevic, who effectively uses the state-controlled media to blame Serbia's economic conditions on the West. Even if sanctions are not having their desired impact, Serbia should not be rewarded with a lifting of sanctions unless it recognizes the borders of all the states of the former Yugoslavia and ends its support for the Bosnian and Krajina Serbs.

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

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

The legislative clerk proceeded to call the roll.

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

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. McCONNELL. Mr. President, I am pleased that the Senate is considering the Product Liability Fairness Act this week. The time for legal reform is long overdue. I am anxious, as one Senator, to get this debate underway. I particularly want to congratulate the bill's chief sponsors, Senator GORTON and Senator ROCKEFELLER, for guiding the bill swiftly through the Commerce Committee, and I applaud Senator DOLE's leadership in bringing the issue promptly to the floor.

I might say, having been involved in this issue for now 11 years, going back to a prior period of Republican majority as chairman of the Court Subcommittee of the Judiciary Committee, we listened to lots of hearings and

lots of talk, and I am glad we may finally have a realistic shot at civil litigation reform in this country.

Mr. President, while I am a cosponsor of S. 565, I also support the effort that will be made this week to broaden the scope of this bill. The American people are frustrated with our legal system. Everywhere I turn, I read and hear about terrible experiences people have when they find themselves inside the liability maze. People with real injuries too often do not get fairly treated. Meanwhile, too many frivolous cases clog the courts. The truth is the litigation system is like a day in Las Vegas or Atlantic City: Sometimes you can win big, but more often the house—that is the system, the lawyers and the courts—win the biggest profits. And the money that goes to the lawyers and the court system is significantly more than the money received by the injured parties. According to the Rand Corp., a full 57 cents of every dollar spent in the liability system is eaten up by the system itself. The injured get less than half, only 43 cents, Mr. President, of every dollar.

What does this mean for the American people? It means they pay more for the goods and services they buy in the economy, and it also means that businesses develop fewer new products, pursue less innovation and create fewer jobs.

The tort tax, Mr. President, is real, and reforming our legal system would mean a real tax break for the American people, a tax cut that will not require an offset and will not risk the Social Security System trust fund. One firm, Tillinghast, estimates that the litigation system costs every individual in our Nation $1,200 annually.

In a recent study, the Rand Corp. looked at the overuse and abuse of our health care system which is driven by the litigation system. In examining only the auto tort system—just for automobiles, Mr. President—Rand found that excess medical claiming, driven by the prospect of reaping a windfall from the legal system, consumed $4 billion worth of health care resources in 1993 alone. That is the same year Mrs. Clinton's task force proposed a restructuring of our health care system. Evidently, the real answer is right here in our legal system. That same Rand study estimated consumers paid in 1993, $13 billion to $18 billion in excess auto insurance premiums because of the litigation craze.

So, make no mistake about it. This debate is about the economy and it is about taxes. If we are serious about tax relief for the middle-class family, let us reform our legal system. Let us cut the cost of an 8-foot ladder by 20 percent or the doctor's fee for a tonsillectomy by 33 percent. We can do it by reforming the legal system.

The American people want us to change our civil justice system. Survey after survey show the frustration of the American people with our legal system. For example, a couple months ago, U.S. News & World Report wrote that 69 percent of Americans find that lawyers are only sometimes or not often honest. Can you imagine? Honesty in the legal profession is not seen as normative behavior. As a lawyer myself, I have to say that I am horrified that such a huge majority of the American people have reached that conclusion. Yet, the organized bar resists any serious or meaningful changes to the legal system.

Last month, the Luntz Research Group found that an overwhelming 83 percent of the American people think our liability lawsuit system has major problems and needs serious improvement. Sixty-four percent of the people believe the liability system is out of control, costing everyone a lot of money and doing a whole lot of damage to our economy. And 79 percent to 83 percent of Americans support specific reforms, such as reasonable limits on punitive damages, abolishing joint liability for noneconomic damages, and loser pays where the judge finds the case to be completely frivolous.

Two generations ago, lawyers acted as statesmen who moderated their clients' behavior. In that bygone era of the 1950's, there was 1 lawyer for every 695 people. Today, there is 1 lawyer for every 290 people; and since lawyers thrive on conflict, they operate as gladiator-litigators, ''ransack[ing] the legal cupboard for nostrums to rectify every wrong, to ward off every risk and to cure every social and economic ill,'' as Harvard Professor Mary Ann Glendon has written in her new book, ''A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society.''

The result is a sue-happy America, destructive to our democratic culture of debate, persuasion, accommodation, and tolerance.

So, make no mistake about it. We have embarked on a fundamental debate about the nature of American society. The legal system, and law in general, is too pervasive a force in people's lives. The reforms debated this week will be about returning the legal system to its appropriate place and to restoring fairness and certainty to the liability system.

The product liability arena is a good place to start. This bill will give some relief to those who sell goods but have no role in their manufacture.

The injured party will be able to recover, but only from the company that caused the injury, that is, the company that made the product. Sellers will only be liable for those warranties they make, or if they commit some act of negligence regarding the product, or in the rare situation that the manufacturer cannot be sued or has no money to pay the damages.

This bill also relieves defendants of liability where the plaintiff was primarily responsible for his or her own injuries due to the use of alcohol or drugs. And, the manufacturer will have limited liability if the plaintiff has misused or altered the product. The bill also restores the element of punishment to punitive damages, by linking them to the economic harm caused.

And, it will eliminate the deep pocket lawsuits, where a defendant with a remote connection to the injuring event is held responsible for all the harm caused. For noneconomic damages, the bill provides for several, not joint, liability.

This bill also includes an important title on biomaterials access, an issue championed by Senator LIEBERMAN and one which we included in our medical malpractice reform bill.

Excessive litigation is causing important suppliers of raw materials used in medical devices to withdraw their raw materials from the marketplace. The result is that individuals with rare medical disorders find themselves without access to lifesaving medical implants.

The bill will shield these raw materials suppliers from liability, where they can establish they had no involvement in the design or production of the medical device. Without this reform, the litigation system will bear the responsibility for the death and injuries of countless Americans. We cannot allow our runaway liability system to harm innocent people.

So, this is a good place to start the debate. We will have a number of amendments, including the addition of medical malpractice reform to this bill, as well as amendments to broaden the punitive damages and joint and several liability provisions, and some provisions from a bill I introduced earlier this session with Senator ABRAHAM, on attorneys' fees and an early offer or rapid recovery mechanism.

This will be a watershed debate in the Senate. There will be many accusations thrown at the reformers this week. The opponents will charge that we reformers just want to deprive injured people of fair compensation. Nothing could be further from the truth. The proponents of reform want to give the American people what they deserve: a legal system that is rational and fair, one that is available when they need it to resolve disputes, and that has some predictability and certainty to it, affording the injured in our society fair and adequate compensation, and holding those truly responsible for the injuries properly accountable.

The American people will be watching us and waiting for results.

Again, Mr. President, I want to commend the Senator from Washington, Senator GORTON, the Senator from West Virginia, Senator ROCKEFELLER, my colleague from Michigan, Senator ABRAHAM, who has also been heavily involved in this issue and thank them for the contributions that they have made and to say I look forward with great anticipation to the week's debate on this most important subject.

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

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

Mr. ROCKEFELLER. Mr. President, the issue of product liability reform is very well known now to Senators after many years. I look forward to the debate that we begin today and in these coming days, because I believe the bill we are going to be considering, S. 565, Product Liability Fairness Act, builds upon past deliberations of this body to achieve reform in the moderate, bipartisan fashion which has been the nature in which we have approached this problem.

I want to pause for a moment to thank my remarkable colleague and friend, SLADE GORTON, for all of his efforts and counsel in crafting this bill and for setting a feeling about it which is efficient, temperate, wise, unemotional and lends itself to the collection of votes.

In addition, Senator LIEBERMAN, Senator DODD, Senator HATCH, Senator MCCONNELL, have played really critical roles in rating this legislation and bringing us to this point in our deliberation. The Senate has considered the topic of product liability reform for over 14 years. And six times the Commerce Committee has reported bills favorably to the floor. Most recently, the committee reported out the current bill, S. 565, by a vote of 13 to 6 on April 6. We have persisted in our efforts to reform the laws governing product liability because we believe that the current system is broken and that we can make changes that will benefit both consumers and makers of products. We have tried and, I think, succeeded, in achieving balance in our effort to streamline the law along these lines. We have simultaneously reduced costs and delays for both plaintiffs and defendants.

In 1985, when I first came to the Senate—that was my first year in the Senate—and joined the Commerce Committee, I in fact voted against a product liability reform measure pending at that time. The committee vote, because of my vote, was tied and the vote, therefore, failed. I felt strongly that the version of the bill then being considered aided manufacturers at the expense of safe products for American consumers. That was my view.

Since then, the product liability effort has changed 180 degrees. The legislation has evolved gradually into an evenhanded, moderate approach that we are considering here today. Senator GORTON and I have worked diligently over recent months to hone the bill that we are looking at today to ensure that it strikes the right balance between the interests of both consumers and business, and we do mean that. Adjustments were made to reflect substantive and other concerns which we concluded were obstacles to the enactment of this bill. We believe we have significantly improved the legislation from earlier drafts and have been responsive to the issues which prevented earlier enactment of this legislation.

Let me draw my colleagues' attention to the substantive changes made in this year's bill compared with the version introduced in the last Congress. The most significant change addresses concerns that have been raised about excessive punitive damages, damages that are awarded to punish and to deter wrongdoing. This year's bill establishes a standard for awarding punitive damages that is essentially unchanged from last year's bill. We have, however, added a provision that requires punitive damages to be awarded in proportion to the harm caused, at a ratio of three times the claimant's economic loss, or $250,000, whichever is greater. I might say that this approach to punitive damages is well within the construct of the law in many areas. Our rationale for this ratio is the goal of bringing to punitive damages some relationship between the size of the harm and the punishment, a goal supported by the American Bar Association, the American College of Trial Lawyers, the American Law Institute and, in fact, the U.S. Supreme Court.

Also concerning punitive damages, we eliminated the Government standards defenses in last year's bill, referred to as the FDA and FAA defenses, which would have prevented punitive damages for instances in which certain classes of products such as drugs, medical devices, or certain types of aircraft had been certified by the Federal Government as safe. While I remain supportive of the concept of a Government standards defense, nevertheless, a number of Senators expressed reservation during last year's debate about this provision, and we have accommodated those concerns by removing the provision.

Another change in this year's legislation concerns the statute of repose which we have slightly modified to include a category of products known as durable goods used in the workplace. Last year's bill was restricted to workplace capital goods, a slightly narrower category. Workplace durable goods are defined as having an economic lifespan of 3 years, or being depreciable under the Tax Code. The workplace distinction, identical to last year's bill, preserves the intent of increasing incentives for employers to maintain the safety of equipment used in the place of employment, rather than shifting that responsibility off to a manufacturer even after the useful life of the product in question has expired. In addition, we have moved the statute of repose period to 20 years. Last year it was 25 years. People will say, well, that is 5 years less. Well, it may be, but it is still longer than any State statute of repose anywhere in the Nation by at least 5 years. I think the average is around 10 to 12 years. One State has 15 years. Ours is 20 years. We think that is trying to lean a little bit toward the consumer.

The third significant change made prior to introduction of this year's bill concerns the addition of a provision that had been part of last year's House companion bill that requires a reduction of a claimant's award due to unforeseeable misuse or alteration of the product. For example, if someone purchases a hair dryer that has attached to it a large warning label stating ''please do not use this in the bath tub,'' and the purchaser immediately uses the hair dryer in the bath tub with probable adverse consequences, it does not make sense to hold the manufacturer liable for such misuse, and this provision would prevent that.

In addition to the changes made prior to introduction, several substantive changes were made in the Commerce Committee markup of the bill itself. First, we incorporated a bill, S. 303, the Biomaterials Access Assurance Act, introduced by Senator LIEBERMAN and Senator MCCAIN, as title II of our committee-reported product liability bill. This title of the bill is designed to ensure that needed raw materials are available to the manufacturers of medical devices by limiting the liability for firms that supply biomaterials. The title only limits liability for suppliers who have done nothing wrong. The ability of consumers to recover from negligent device manufacturers is preserved.

We made several other substantive changes in the committee markup. We modified our product seller provision to extend protection to blameless rental and leasing companies. This will address the fact that in 11 States car rental companies can be forced to pay for damage caused by people who rent their cars, even though the car rental companies obviously did not make the car and did not do anything wrong. We made a change to the statute of repose that will ensure that manufacturers keep their promise by enabling injured workers to sue for damage caused by products over 20 years old if the manufacturers guaranteed their product's safety for a longer period.

Finally, we modified our alternative dispute resolution provision which gives States an incentive to create proplaintiff, voluntary, nonbinding arbitration mechanisms.

This provision contains a penalty for defendants who unreasonably refuse to participate in the arbitration. A criticism was raised during our committee hearings on the bill that greater specificity was needed for the definition of unreasonable refusal, so a set of factors was added to address that concern.

Mr. President, I will have a lot more to say about the substance of the bill as this debate unfolds, but I know there is at least one other Senator who

wishes to speak, so I will keep my remarks brief. Let me conclude by stating the reasons we must pass product liability reform this year after all of these years.

Under our current system, injured consumers often find it impossible to get just and prompt resolution. Just as frequently, blameless manufacturers are forced to spend thousands of dollars on baseless lawsuits. The system frequently allows negligent companies to avoid penalties and even rewards undeserving plaintiffs.

Product liability law should deter wasteful suits and discipline culpable practices, but not foster hours of waste and endless, endless, endless litigation. The adverse effect of having a hodgepodge of rules is severe for everyone. In fact, is a rather major fact in American life, I might add.

Injured persons and those who make products alike face a 55-unit roulette wheel when it comes to determining rights and responsibilities. The results hurt everyone.

Injured persons have testified that they may be unable to obtain needed medical devices for their continued health and well-being, and there is a lot of very powerful testimony on that front. Manufacturers have indicated that good and useful products are not placed on the market. The Brookings Institution has documented many instances where safety improvements were not made because of fears about uncertainties in our legal system, which brings up the sort of fascinating concept that manufacturers will decline to improve a product for fear that that lends the implication that the product that they previously had was somehow insufficient.

It is now a fact of life in many places where they simply, therefore, do not improve the product so as not to make themselves liable to that interpretation, all of which, of course, is absolutely ridiculous. Included in the Brookings discussion were, for example, built-in child seats and air bags.

As I have studied this complex area, I found incentives for preventing accidents are often not in the right place. In formulating our bill, we have striven to place incentive on the person who can best prevent an injury. This is a matter that has not been given adequate attention during past debates, but given the opportunity to carefully study our bill, Senators, I believe, will see that care and thought has been invested to assure that no wrongdoer goes unpunished and that positive prosafety behavior is encouraged.

For all of these reasons I very much look forward to our debate. I welcome the criticisms, the insights, and the suggestions for improvements that I am sure our colleagues will contribute during the process of this debate.

I yield the floor.

TRAGEDY IN OKLAHOMA—THE LESSONS FOR THE FUTURE

Mr. DEWINE. Mr. President, I rise today to express on my own behalf, and on behalf of the people of the State of Ohio, our deepest sympathy with and for the people of the State of Oklahoma as they cope with the devastating tragedy that took place last Wednesday. Our hearts go out to victims and the victims' families. No one, Mr. President, could watch yesterday's memorial service and see the pictures of the victims, the pictures of the children, without a lump in their throat or having to turn away from the screen.

Mr. President, I want to congratulate the rescue workers and all the volunteers, as well as the police—both the Federal Bureau of Investigation and the local police officers—who have proven to a concerned America that we will, in fact, fight back against terrorism.

Mr. President, when Oklahoma State trooper Charlie Hanger arrested one of the suspects in Oklahoma, he was acting on behalf of all Americans. He did not know at the time, of course, that he was arresting a terrorist. He was simply doing his job, the job that he does day in and day out.

He pulled over a motorist apparently for suspicion of speeding. The motorist said he was driving cross-country—but the officer noticed the driver had not gotten comfortable the way most cross-country drivers do. He still had his jacket on. He did not have any luggage.

Mr. President, noticing details like that is the very heart of good police work. When the motorist leaned over, the policeman saw the bulge of a concealed weapon and at that point arrested him.

Officer Hanger brought in the suspicious motorist. Subsequently, it turned out that the man he arrested for carrying a concealed weapon was one of the most wanted individuals in America. All in a day's work.

That, Mr. President, is really what police work is. It is not glamorous. In fact, many times it is downright laborious, boring. To get that one terrorist, it takes thousands of police chasing down thousands of leads. Most of the leads do not go anywhere, but they all have to be pursued so that ultimately the guilty can be captured. I am sure, Mr. President, in the days since this tragedy occurred, thousands and thousands of police officers thousands of thousands of different times across this country have analyzed what they were doing and tried to identify the composite picture and have done things that they do in their good police work, things that in most cases turn out not to lead anywhere, but they know that they have to do that.

Mr. President, the pursuit of the suspects in the Oklahoma City bombing proves the immense value of hard work and patience in American police work. It also proves the awesome importance of technology in the war against terrorism and other kinds of crime.

Technology and good police work have really been the key to making the progress that has been made thus far in solving the mystery of this horrible tragedy. Federal agents recovered a confidential vehicle identification number from a fragment of a truck found at the bombing scene. This number led the FBI to a Ryder truck rental office in Junction City, KS—and that is where the composite pictures of the suspects were made.

Mr. President, we need to do everything we can at the Federal level to promote the kind of cutting-edge Federal technology that makes this possible. I will be introducing in the near future a comprehensive Federal crime bill that would help hook up all of America's police departments into this Federal information data bank. It will help maintain a national DNA bank to allow the local law enforcement officers to identify and capture sex offenders and other violent criminals. It will be a data base, Mr. President, that deals not only with DNA, but also with fingerprints, also with ballistic comparisons, and also with information about individuals who have been convicted of serious offenses.

Mr. President, as we deal with the aftermath of the bombing in Oklahoma City, I think there are three important tasks ahead for the U.S. Senate.

First, the Senate does need to increase the availability of crime-fighting technology to make this available to every law-enforcement officer in every town and every community in the country.

Second, the Senate needs to take a very close look at how we deal with the entry into the United States of individuals who are affiliated with international terrorist groups. We must look, also, at what we should do when we determine aliens already in this country are members of such groups.

Third, the Senate needs to examine the issue of domestic terrorist groups to figure out the best way to infiltrate these extremist groups and then to keep tabs on their dangerous activities.

Mr. President, over the next few days I will be discussing my own legislation in greater detail. I think that the level of attention the Senate gives these issues in the days to come will be one factor, a major factor, lessening the chance of another tragedy of the kind that took place this past week.

Again, Mr. President, let me offer to the victims, the families of the victims, the loved ones, our deepest sympathy for this horrible and senseless tragedy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks to be recognized?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BREAUX. 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 Senator from Louisiana is recognized.

COMMON SENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. BREAUX. Mr. President and my colleagues, here we go again, back on the famous product liability reform bill. I think one of the things that Members do in an effort to try to get legislation passed, I would say sort of tongue in cheek, when they are uncertain about the merits, they label it ''reform.'' We have had the Tax Reform Act, we have had the Health Reform Act, we have had the Product Liability Reform Act, and no matter whether it is real reform or not, if you call it reform long enough and loud enough and enough people hear it, then a lot of constituents will start writing and saying, ''You have to be for that reform act that is pending in the Senate or pending in the House. I am not really sure what it does, but if it says that it is reform, it must be good and you had better vote for it if you ever want to come back and get reelected or speak with your constituents in any kind of civilized fashion.'' I say here we are again, because once again in this Congress, the Senate is going to be called upon to address what some have called a Product Liability Reform Act.

I raise the question at this time as to why we need to be doing this because, in fact, I think this is something that, over the many decades, years and years of our country's history, has been an area that has been reserved to the States in order for the various State legislators to look at these issues and make decisions based on what is appropriate and proper when it comes to dealing with the personal injuries of the people who reside in their respective States.

Now, there are some in this Congress who will say no, we are going to do it all from Washington, and we do not care how long the States have done it or how intense they have been in their efforts at laying out systems that make sense for the people of their respective States—no, we do not care about that. We are going to take it all here, here in Washington. We are going to do it all from Washington because we know best.

I suggest just this. People in some parts of our Government here in Washington, and some parties here, are saying when it comes to some subjects like product liability reform—again, the word reform is attached to everything you want to change; let us reform it—they make the point that States are so backwards and so inefficient and so ineffective in handling personal injury cases, they would say that we are going to bring it all to Washington, but that with welfare reform, the Federal Government is so ignorant and so slow and so messed up that when it comes to welfare reform, we are going to send that to the States.

They say we are going to block grant all the welfare programs and rules and regulations on welfare and send it to the various States—all 50 States. Let each State decide what is best for the people of that State when it comes to welfare programs and how to reform it because the States know best and the Federal Government is really too slow and too ignorant to make the right decision. But when it comes to product liability, the States are so slow and so dumb and do not know what to do we are going to take that jurisdiction away from them and bring that jurisdiction to Washington because Washington will do a much better job. The inconsistency of those positions in my opinion is irreconcilable.

I would suggest that in areas where the States have worked their will and where they have done a good job we should leave it alone. I would suggest that when it comes to product liability, the phrase ''if it ain't broke don't fix it'' applies. I would also suggest that those who say this is such a crisis of litigation that it threatens the very legal institutions by which we govern ourselves, look at the facts at what is happening out there. Is there an explosion of litigation? Ask anybody in this body who would be willing to answer this question of the amount of litigation that says we have to supercede what the States have done and bring it all here to Washington.

I think the facts are clearly just the opposite. In all State courts in 1992, all tort cases or cases that people sued because of personal injury in civil courts amounted to just 9 percent of the total civil cases filed. And product liability suits, of which we are talking about today, accounted for only 4 percent of all the tort filings in all of the civil courts, in all of the State courts, in the Nation. That amounted to .0036 percent of the total civil case load of all of the State courts in the United States of America—.0036 percent.

When we read those figures, one might ask the question. Why in the world does anybody think that there is a problem? Why does anybody think, if it is that small a number of lawsuits being filed that represent product liability suits, that it is such a mess that we would have to take it away from the States and we are going to do it in Washington, we are going to make it right in Washington because we in Washington know best what is best for the people of my State of Louisiana, or any other State in the Union, that we know so much more about how to solve this we are going to do it in Washington. People back in Louisiana say, ''Senator, are not you saying at the same time that we do such a lousy job on handling personal injury product liability legislation in my State that you are going to take it to Washington but when you talk about welfare reform, Washington does such a lousy job you want all the States to handle it?'' Why is it any different?

We are talking about laws that affect the health and safety and the future of the people of a prospective State. When it comes to those areas I am a strong States rights Senator. I believe the rights of the States should not be trampled on. The rights of the States to govern what happens within their territorial boundaries should not be superseded by the Federal Government without a legitimate and an overriding mandate as to why we should do it on the Federal level.

I would suggest that when only .0036 percent of all civil cases filed in State courts amount to cases filed dealing with product liability, that it is not a national problem, justifying jerking the rug out from under the States and say, no. Here in Washington we are going do it, and we are going to do it a lot better than you have been able to do it back home. I do not buy that.

I will say to my colleagues in the Senate that my own State of Louisiana has addressed these problems, and they have handled it in the State legislative bodies. Interestingly enough, some people say, ''Well, this is a big battle between business and plaintiffs. It is a big battle between the people who get sued and the people who do the suing. And there are too many people doing the suing. So we have to pass legislation in Washington to protect those who are getting sued.'' That is not so where I come from because I asked the Congressional Research Service to compare the legislation that is pending in the Senate, and legislation passed the House as well with the laws that we already have on the books in Louisiana. Do you know what they found? Here is the concluding paragraph. This ought to knock somebody's socks off who is saying we should be doing what some have suggested.

Conclusion: H.R. 956, which I understand is the pending bill, the House passed product liability bill. H.R. 956 would be more favorable to the plaintiffs than is Louisiana law with respect to product seller liability.

I repeat that again. The bill before the Senate would be more favorable to plaintiffs than is Louisiana law with respect to product seller liability. This is from the Congressional Research Service dated March 17, 1995. Therefore, if businesses say we get sued too much, we know we need changes in the law and we want more protection, my goodness. The bill that we have pending before us today on the Federal level is more favorable to the plaintiffs than what Louisiana has already done to limit product liability suits and to make it more difficult to prove damages and to recover. Louisiana has already drafted legislation. It is on the books. It is the law of the land in my State.

Therefore, I argue not whether we should be benefiting plaintiffs or whether we should be benefiting those who make defective products. My argument is that we should not be taking this jurisdiction away from the States who have had to address these issues, for countless numbers of years. The States know the needs of people and they know the needs of the companies that produce products that operate in their respective States. The question is; and I will ask it until someone can give me a good answer. Why is it necessary to usurp the jurisdiction of the States and make the argument that some things the Federal Government knows best and we are going to handle it here in Washington?

When I was in law school they used to call it forum shopping. They used to say you pick the district where you want to file the suit depending on the type of judge you have, and you file it where you have the best judge for your particular cause. If you are a defendant or a plaintiff, you forum shop. I would suggest that the companies that are concerned about defective products that they may have produced, say in some States we get a good deal but I bet we can get a better deal if we bring it to Washington. So let us forum shop. Let us see if the U.S. Congress can take away all the jurisdiction from the States and bring it all to Washington because big brother in Washington knows better than the people of our respective States.

I just cannot get passed the point argued by some people. On welfare reform, the Federal Government is so dumb we are going to give it all to the States. But on product liability the States are so dumb we will give it to the Federal Government. That is forum shopping. Pick the issue and find where you are going to handle it, pick the best forum, the best results on a particular issue.

The point I am trying to make here today is the States have in fact addressed product liability. For my State, as the CRS has concluded, the Federal bill is better for plaintiffs than our State law. But I side with the States. I side with my legislatures who have looked over Louisiana and said this is what the people of my State want. This is what is best for our State. They passed it by majority vote. The laws have been signed into law by the Governor of our State, and it is the law of the land. For the life of me I cannot decide why that should be changed and have everything sent to Washington for a change.

In addition to that, I am concerned about the fairness of this legislation. I do think it is one-sided. I do think on the Federal bill we do not treat people who are injured with the same rights and the same standards as we do the people who have made defective products. That is not fair. If there is anything we ought to be following as our guideline on legislation that affects human health and safety, it is fairness. It is how people are treated, both who make the products that are defective and that cause injuries and how we treat people who are injured by those defective products. Nobody should have an advantage. We should speak of fairness. We should speak of a level playing field. Everybody should be treated equally.

But I will assure you that my reading of the legislation S. 565 does not provide any basic system of standard of fairness. Let me give you an example. The bill S. 565 provides a series of hurdles and limitations on the ability of people who are injured, that they have to cross over in order to be able to recover from manufacturers who make defective products. But it expressly exempts business from many of the same requirements that we put on individuals who are injured, many of them quite seriously by defective products. The standards, in other words, for the people who are injured and what they have to show and what they have to prove in order to get recovery from their bodily injury is different from the standards that this bill places on business, when they have injuries that are economic injuries caused by the same defective products.

I would suggest that is wrong; that is not fair; that is not balanced; that is not a level playing field. Let me give you an example. If company A, for instance, purchased a piece of equipment from company B, and that piece of equipment was defective and one day explodes, company A that bought it could sue company B that manufactured for the economic injury they suffered. They could sue for the loss of profits they would have made if that piece of equipment had not broken or exploded. They could sue the company that sold them that product for all of their lost profits caused by the disruption of that accident.

On the other hand, let us take the family of the poor worker who was operating that machinery which exploded in the same factory. When he or she brings their case to the courts of the land under this legislation, they must face limitations and hurdles in order for them to recover.

To make matters even worse, under the Senate Commerce Committee's version of the bill, if that machinery, for instance, had been in place for 20 years or more, the injured person in the family could not even bring litigation to recover any of their losses for their injuries while the business would not be restricted in any way.

Why is it all right for the business to be able to sue for lost economic profits because of a piece of defective equipment but the individual who may be injured physically by this same piece of defective equipment is somehow prohibited from bringing a case against the company merely because it had been in place for maybe 20 years?

What is fair about that? Why should they not both be prohibited from bringing the case or both allowed to bring a cause of action for defective equipment? How can you say this is fair?

I talked a little bit about punitive damages. It is really interesting; remember when I talked about Louisiana, that we have already addressed this? In Louisiana, there are no punitive damages, period—none—for product liability. You cannot get punitive damages for a product liability case in Louisiana. That is what the legislature said. That is the law of our land. This bill allows it. This bill says we can have punitive damages limited to $250,000 or three times economic losses of the person who is injured.

Now, I do not know why there is a huge rush to do this in the first place. My State has done it. I wish they had not done it. I disagree with it. But this bill says punitive damages—which are intended to say to a manufacturer, you have done wrong; do not do it again; you will be penalized—will be limited to $250,000 or three times the economic damages. That sounds like an awful lot if it is a mom and pop product manufacturer, but if it is an international business? Does it mean a lot to them, when they may make more than that in profits in an hour? Is it really a deterrent to say you are only going to be able to have punitive damages of $250,000 or three times economic losses? If I was a big international manufacturer and I saw that my punitive damages were going to be limited, why worry about it. That is just the cost of doing business. I am going to make the product, sell a lot of it and if somebody litigates this and takes 4 or 5 years to finally get a judgment against me, I will just pay the judgment and if the punitive damage is so low, why worry about it?

This is the point I wish to make here. I do not know why people think there is such a rush of litigation that provides for punitive damages that we need to change the law. The statistics I have show only 355 punitive damage awards in product suits occurred from 1965 to 1990. That is in the Nation. Only 355 cases between the years 1965 and 1990 ever awarded punitive damages, and half of these awards were reduced or overturned on appeal. And in three fourths of these cases the defendants took steps to improve the safety of their product. Of course, that is the point of having punitive damages. They say to a manufacturer of a product that they knew was defective or likely to be, we want you to make some changes; we want you to do things differently. The threat, even a small threat of punitive damages for detective products makes a great deal of sense and should not be changed.

This portion of the bill, quite frankly, discriminates against low and middle income people. I think it discriminates against women, infants and children by limiting the damages to three times the economic injury or $250,000.

I give you an example. The same type of lawsuit for a defective product against company A. The product causes

injury to an insurance executive or a businessman who is making $1 million a year and doing very well in society. Now, compare that with the same injury from the same product to perhaps an ordinary housewife who is not employed except within the home, is not employed as a salaried person. If the injury causes the executive to miss 1 year of work and causes the housewife to miss 1 year of work, the executive would be able to receive $3 million in punitive damages—three times his economic loss. And, for the same conduct, the housewife would only receive a very small amount, $250,000, for the same type of injury, in the same case, with the same defective product. I do not think that is fair.

So I will conclude. We will have a lot of time to debate this over the period of time that is allotted for us to consider this legislation. But the two points I have tried to make today are quite simple. No. 1, the States are already doing this. And to all Members of Congress who have stood in the Chambers of the House and Senate over the years and said I am for States rights, the Federal Government should not interfere where it is not necessary, the Federal Government does not always know best—the people of the States know what is best as communicated through their State legislatures—I say that we should not be yanking the rug out from under the States. We should not be usurping the power of the States to handle personal injury legislation affecting the people of that State concerning products that injure them.

Point No. 2 I think is equally simple and not difficult to understand. The legislation that is before the Senate at this time is simply not fair. It is simply a piece of legislation that discriminates against those who have and those who do not have. The goal of this legislation should not be for us to try to make it better for one category of Americans over another category of Americans; that the goal should be to create a system of balance, a level playing field, and a system of fairness for all of our citizens, whether they be businesses that make products or people who use those products. It should not be a guiding light for us to say we are going to do everything we can to help those who make the products but discriminate against those who use the products.

I think in the couple of cases that I have tried to cite this bill does not provide the fairness that we as Members of this body should be striving to accomplish through this legislation.

Mr. President, I will have more to say on this legislation as the debate continues but at this point I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

Mr. President, I have sought recognition to comment preliminarily on the pending legislation, and it is my view that some reform would be useful—illustratively, the alternative dispute resolution or perhaps the collateral source rule which would limit a recovery where the plaintiff has already been compensated by insurance proceeds.

It is true, as to the collateral source rule, that the plaintiffs contend they should not be foreclosed because they have paid for the insurance, but there are valid considerations I think in such a situation where having been compensated there should not be a double recovery.

In looking at this legislation, it is my view that we must exercise care in what we do here and that we must proceed with a scalpel and not a meat ax, and that, as the Founding Fathers declared it, the Senate should function as the saucer to cool the tea which has come from the House of Representatives.

As a practicing lawyer, I represented both plaintiffs and defendants in personal injury cases, represented both sides in security act cases. In my early days in the practice of the law with the Philadelphia firm Barnes, Dechert, Crassmeier and Rhoads, which later became Dechert, Price and Rhoads, I represented the Pennsylvania Railroad in the defense of personal injury cases. I represented a plaintiff in a widely noted product liability case.

In the course of that activity in the practice of law and having been on the Judiciary Committee for the past 14 years-plus, it is my view that the Congress should proceed with caution in altering the decisions of the courts which have been built up over many years, many decades, really many centuries.

As was pointed out in the treatise on the American Law of Torts by Stewart M. Speiser, Charles F. Krause, and Alfred W. Gans, tort law has been used to control behavior for over 2,000 years. As Prosser and Keeton on the law of torts point out, the tort rules, including product liability, are evolutionary accretions, and the decisions on which they are based have been handed down by the courts in a very methodical way with extraordinary analysis over long periods of time.

The seminal case was the decision in England in Winterbottom versus Wright, where the broad language of Lord Amiger laid down the first rule that the original seller of goods was not liable for damages caused by their defects to anyone except his immediate buyer or one in privity with him. That rule stood for a very long period of time until the celebrated case of McPherson versus Buick Motor Co., where Judge Cardozo of the New York Court of Appeals, the highest appellate court in New York, later Justice Cardozo, ruled that a manufacturer was liable for negligence to the buyer of an automobile, a rule that now seems strange that it had to be a change in the law to say that the manufacturer would be liable to the person who ultimately bought the automobile as opposed to limiting the claim of the buyer of the automobile to a company which sold him the car and then leaving it up to that company to go back to the manufacturer.

Early in my own legal career, I had an occasion to litigate in some depth a product liability case captioned Thompson versus Reidman and General Motors. That case achieved some note, having been reviewed in law review articles because it established a new rule which enabled a passenger in an automobile to sue the seller of the automobile, Reidman Chevrolet Co., and also the manufacturer, General Motors.

It seems that such a decision back in 1961, when it was cited as one of the important cases in the law of the development of product liability in the law of torts by Prosser and Keeton that by the hindsight of the intervening years seems strange that there would be any question about the standing of a passenger in an automobile to sue the seller of the automobile, Reidman Motor Co., and the manufacturer. But it was. And it is an indication of the kind of accretion, or what I call encrustation, of the common law that I studied in great depth in the course of bringing that litigation as a plaintiff's lawyer. When I represented the passenger, a man named Pete J. Thompson, against the driver of the automobile, William Gray, who was a sergeant in the military, and did not learn until some 2 years and 9 months after the incident that the cause was a stuck accelerator pedal and then found that the statute of limitations, 2 years in the State of Pennsylvania, had expired. Then I took a look at the Uniform Commercial Code, which had a 4-year statute of limitations, and sought to sue on behalf of the passenger against Reidman, which sold the car, and General Motors, the manufacturer. I faced a motion to dismiss. And the prevailing law at that time was that a passenger could not collect because the passenger was not in privity. And that is the legal term where the individual did not have a contract with the seller of the automobile, Reidman Motor Co., as did the buyer, William Gray. And there was no privity that the passenger had with General Motors.

I argued that the court ought to create an exception to the privity rule because it was an analogy to the guest in a household. The Uniform Commercial Code had established a standing of a guest in a household to sue the seller of a product, like a toaster or an oven, or the manufacture of the product. The U.S. District Court for the Eastern District of Pennsylvania decided in my favor.

As I say, the case was noted in some of the law reviews. And then, a plaintiff in Allegheny County noted it and filed a lawsuit out of privity and the case went to the State supreme court which decided that privity was necessary as a matter of Pennsylvania

law. The rule is that on substantive decisions, under Erie versus Tompkins, it is the State law which governs. Then General Motors and Reidman Chevrolet Motor Co. came back to the eastern district court and moved to dismiss and the judge reversed himself and my case was thrown out of court, as the expression goes.

In the course of that litigation, it was quite an extensive research job that I undertook to give me some substantial appreciation of how we come to these rules of law.

While not directly relevant from the point of view of product liability, I then found an exception to the statute of limitations under the Soldiers and Sailors Civil Relief Act of 1940, even though this was many years later, and was able to press the claim in tort and ultimately took the case to trial and after several days of trial received a settlement in the case.

But I refer to the decision at some length because of the insights which I gained from that decision. And as I sit through the markups in the various committees—and the markup, for those who may be listening on C–SPAN and are not familiar with precisely what we do, is where we take a bill in a committee and decide how we ought to change the law or what law we ought to make as a matter of public policy. These markups, where we write the legislation which later comes to the floor, follow hearings where very frequently, although there are maybe 18 members of the committee, as, for example, on the Judiciary Committee, there are only one or two present. It has been my observation that our markups do not necessarily reflect the epitome of reason and experience as we do the best we can.

So that, by contrast, to the way the encrustations occurred in the judicial decisions since 1842, when these issues were considered, through the 1916 case in Buick versus McPherson and the 1961 decision that I personally participated in in Thompson versus Reidman and General Motors, I approach the field of legislative changes in tort liability with some substantial concern.

The issues which we are considering were considered, to a substantial extent, in a law review article which I think is worthy of some reference by Prof. Gary T. Schwartz from the UCLA law school, as published in the Georgia Law Review in the spring of 1992. And the point that Professor Schwartz makes, which I think is worth noting here, is the way that the courts have responded in a rational, case-by-case, stare decisis way to important public policy considerations.

Professor Schwartz points out at page 697 of the Georgia Law Review, volume 26, as follows:

> Consider the New Jersey Supreme Court which had voted unanimously in favor of hindsight liability in failure to warn cases in Chadha and then voted again unanimously against hindsight liability in Feldman 2 years later. In explaining the turnabout in Feldman, the court acknowledged the heavy criticism that the Chadha case had provoked in the law reviews.

Then Professor Schwartz goes on to point to other changes when he notes the evolution of the views of the distinguished supreme court justice of California's highest court, Justice Stanley Mosk. He says:

> As a member of the California court in the 1960's and 1970's, Justice Mosk was deeply involved in the fashioning of the strict products liability doctrine. In 1978, the court majority, in a somewhat conservative vein, ruled the principles of comparative negligence can reduce the plaintiff's recovery in a strict products liability action. Justice Mosk's dissenting opinion began with the complaint that ''this will be remembered as a dark day when this court, which heroically took the lead in originating the doctrine of products liability, beat a hasty retreat almost to square one. The pure concept of products liability so pridefully fashioned and nurtured by this court is reduced to a shambles.

Professor Schwartz continues:

> Ten years later, however, Justice Mosk authored the California court's opinion in Brown versus Superior Court ruling that negligence principles, rather than hindsight strict liability, apply in a prescription drug case. Three years after Brown, however, Justice Mosk concurred in the court's ruling in Anderson versus Owens-Corning Fiberglas Corp. that a hindsight analysis should be rejected in all cases involving a failure to warn even when the product is asbestos. Indeed, Justice Mosk's concurring opinion suggests that the entire doctrine of failure to warn in products liability should probably be reclassified under the heading of negligence. In this concurrence, Justice Mosk quotes his own pure concept of products liability words from the Daily and then goes on, in essence, to eat his words.

I do not expect the casual listener to be able to follow the details of this kind of commentary on this very complex, opaque, and difficult-to-understand products liability matter. But for those who are conversant in the field, it shows the evolution of a very learned and very thoughtful supreme court justice as he works through the rules.

I would suggest that when the Congress of the United States seeks to make changes on this very carefully calibrated law, which is a matter of accretion, as Professors Prosser and Keeton articulated, or incrustation, as others have, that there ought to be very great care exercised by the Congress in the procedures we undertake. Especially in the context where we are functioning now in response to a mandate from last November, that we ought to in this body exercise the Senate's traditional prerogative of the saucer which cools the tea which comes from the House of Representatives.

Without going on at much greater length than what Professor Schwartz had to say, I will quote his comments at page 702 of the Georgia Law Review to this effect, citing how there are modifications in the judicial decisions:

> The last decade has witnessed a number of judicial rulings. Thus, New Jersey has reversed itself on manufacturer's liability on unknowable hazards, Illinois has engaged in an interesting effort to abrogate the traditional tort of attorneys' malpractice, the fifth circuit has essentially overruled its presumption of causation for inherent risk-warning cases, Tennessee has eliminated joint and several liability, and Maryland has overturned precedents in reducing the availability of punitive damages. Still, for the most part in recent years, we have seen the marking by courts' unwillingness to extend precedent and by their resolution of open legal questions in a liability-restraining way.

When you take a look at some of the provisions of the current legislation where we exonerate the seller from responsibility but leave the purchaser to the manufacturer, how problemsome may that be in cases where the manufacturer may turn out to be insolvent. That determination may not be made until long after the statute of limitations has expired as to the seller or provisions under the workmen's compensation sections where the employer may be entitled to greater compensation than he has actually paid out.

It may be that useful attention may be directed to the question of service or process of foreign manufacturers who come to the United States to sell, but inordinately complex rules limit the ability of buyers in the United States to bring in those foreign sellers or changes in the rule where the issue arises as to the collection from foreign sellers.

The issue of joint and several liability is a very complex one, and it may be that there is some intermediate ground which will not subject someone liable for a tiny fraction, a percent or two, which is decided for the entire award where all others are judgment-proof. That is something which I think has to be very carefully considered as we work through the amendments on the pending legislation.

Also, the issue of damages as to what will occur where you have a case like the one involving the tragic death of our late colleague Senator John Heinz where there were tragic deaths and injury on the ground when the plane in which Senator Heinz was flying had a landing gear which apparently was not going down and a helicopter from Sun Oil came to try to help out. There was a collision, and the plane fell to the ground in a school yard in suburban Philadelphia—tragic deaths, tragic burning injuries which would not have been compensated as this bill would limit joint liability, a liability which has been eliminated in some States but something which I think we have to very, very carefully consider.

There are a series of cases which have illustrated the very dastardly conduct—searching for a right word not to be overly condemnatory—where you have the Ford Pinto case where there would be a classic case for the imposition of punitive damages if ever one existed.

It was brought to light in litigation where the defendant had the matter brought to light in a letter which was sent by Ford's chief safety officer to

the National Highway Traffic Safety Administration. It was noted in that case that Ford had sought to avoid liability or responsibility to make changes in its fuel system which was located too close to the rear bumper and lacked critical safeguards where minor collisions caused the car to burst into flames upon impact.

This letter, which contained a remarkable cost analysis saying that there ought not to be a change in the fuel system because the savings from 180 burn deaths and 180 serious burn injuries and 2,100 burn vehicles would cost $49.5 million, evaluating the deaths at $200,000 per death and the injuries at $67,000 per injury, and the vehicles at $700 per vehicle, contrasted with the cost of what the National Highway Traffic Safety Administration wanted done to change 11 million cars and a million and a half light trucks at $11 million per car and trucks which would cost $137 million.

When this effort was brought to light, it showed in as clear a way as you can conceive the necessity for a liability which would exceed the kind which is talked about here under punitive damages. Or if you deal with the Dalkon shield IUD case or the asbestos cases, where in the face of known damage the manufacturing was done again and again and again; or in the Playtex case of tampons causing toxic shock syndrome, or the flammable pajamas case, or the Dalkon shield. These instances have to be very carefully considered when this body is undertaking a review of the punitive damage issue.

There are several relatively recent decisions by the Supreme Court of the United States in this field, including one captioned TXO Production Corp. versus Alliance Resources Corp., decided by the Supreme Court in 1993, and another case is captioned Pacific Mutual Life Insurance Co. versus Haislip. Both of these decisions have opinions written by Justice Scalia, who is noted for his conservatism. While these cases involve the constitutional issues regarding punitive damages, they have some bearing on a public policy analysis which, as we know, when the Supreme Court of the United States takes up constitutional issues, they very frequently move over into being a super legislature. Some of those matters, I think, are worthy of our analysis.

So, Mr. President, I make these preliminary observations as we move to open debate on this product liability legislation, saying as I did at the outset that some reform would be appropriate, but urging my colleagues to subject this legislation to very, very careful analysis, because we are looking at tort law developed over some 2,000 years to influence human conduct and a stream of product liability cases originating in Great Britain in 1842, subject to very, very intensive litigation in the United States; product liability, which is not made by the plaintiff's bar or the defense bar but made by the courts of the United States, and issues on punitive damages which have reached the Supreme Court of the United States, which have been upheld in the constitutional context by justices like Justice Scalia.

I think the debate will prove useful. There are many issues to be considered. And as has been said earlier, I look forward to the debate and to an opportunity to participate extensively as we move through consideration of this important legislation.

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

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I, too, wish to address Senate bill 565, the Gorton-Rockefeller Product Liability Fairness Act of 1995. As the Senator from Pennsylvania has just mentioned, today marks the beginning of a historic debate in the Senate on the need for civil justice reform, because more than ever in recent years there appears to be an opportunity for us to make some real changes in law. For the first time in more than two decades, the House of Representatives has debated and passed comprehensive legal reform legislation, including product liability reform, as part of its Contract With America.

According to a Luntz Research Co. survey, ''83 percent of Americans continue to believe that our liability lawsuit system has major problems and needs serious improvements.''

Now the Senate, I suggest, must do its part to make meaningful legal reform a reality to respond to this concern on the part of the American people.

I want to begin by commending my colleagues from Washington and West Virginia for their 15-year effort to bring needed reform to the Nation's product liability laws.

I also agreed with the comments of the Senator from Pennsylvania who noted that it is important for us to be careful in the process of changing this law, because our States have different versions of product liability laws and because the law has built up expectations over the years. I also note, however, that the roughly 2,000-year development of this law, as the Senator from Pennsylvania mentioned, has changed rather dramatically just in the time since I attended law school, and that was not that long ago, Mr. President. In fact, the law was quite stable until about that time.

So I think that because of the changes in the law and the dramatic impact that those changes have had on our economy and on our society, it is time to reexamine what might be done and that it is important for the Congress to enact reasonable reforms to protect our Nation's manufacturing base from unreasonable litigation.

Historically, of course, America's strength has been in manufacturing, where much of the wealth of our Nation has been created. Although product liability law is but a small area of tort law generally, it is also a critical area in which America is losing its competitive edge. I noted, Mr. President, that this law has changed dramatically since I was in law school. The year was 1964 when I began law school. Some important decisions came down, starting with decisions from the State of California, which created a new concept called ''liability without fault.'' It is a concept that some Americans might have difficulty in understanding. I myself still have difficulty understanding why someone who is not at fault can be held liable for literally millions of dollars in damages. That is what the doctrine is called, liability without fault.

Why is the doctrine called liability without fault? Because a plaintiff who is injured has the right now to bring an action against a manufacturer for a defective product, even though it is impossible to prove that there was any negligence in the creation of that defect. In other words, Mr. President, a manufacturer cannot have exerted every bit of care possible, has been as careful as one could be in developing the plans and hiring the people to produce the product, and they could have been as careful as possible; yet, notwithstanding all of the care exercised in the creation of the product, as happens, we all know it is part of life, a mistake is made, a defect is created and someone is injured as a result. Because of that injury, and only because there was an injury, in this one limited area of our law the manufacturer can be held liable for an unlimited amount of dollar damage because of the defect, even though there was no negligence.

Mr. President, I said Americans might find this difficult to understand because of the historic notion in our tort law that you can recover against someone who is negligent, who was not careful, as a result of which you were injured and sustained damage. That has been the law for 2,000 years, until 20 years ago, or 25 years ago, when the notion began to be accepted that the status of the victim was the most important thing and that it did not really matter what the consequences were to the manufacture of a product or to our society as a result of holding manufacturers of products to this standard of liability without fault.

In other words, it did not matter with respect to the financial status of a business; it did not matter whether or not it puts the United States at a great competitive disadvantage; it does not matter that all due care was exercised. The only thing that mattered was that someone who was hurt had to be able to recover against someone.

It is so bad, Mr. President, that persons do not even have to recover just against the manufacturer of the product. It is enough to find someone in the case persons can sue and recover from.

So we identify the manufacturer of the product, we identify the wholesaler

and we identify the retailer, just to make it a simple case, although there are more complex cases. And we then find that the manufacturer has gone out of business or does not have enough insurance to cover the loss. The wholesaler, too, has gone out of business or does not have adequate insurance.

So despite the fact that the seller had nothing to do with this except that he unwrapped the box, put it on the shelf, and sold it to the consumer, who was then injured because of the defect, despite that fact, the seller can also be held responsible.

In a case where we get a judgment against all three—the manufacturer, the wholesaler, and the retailer—there is what is called joint and several liability. They are each liable for all of the dollar damage, irrespective of the relative degree of their involvement. None of them, remember, were negligent, but one of them produced a product which turned out to have a defect in it that caused the damage. All of them can be held liable. The notion has been accepted that all of them can be liable for the entire amount, so that the retailer in this case, if that is the one that has the deepest pockets, as they say, the one that can afford to pay, ends up paying the bill.

A lot of folks think that is wrong. I agree. That is why we have joint and several liability reform. But it does not go nearly far enough in this bill, as I will get to in a moment.

The point of this little discourse in law is simply to note the fact that some things have happened to our law over the years that have, in my view, not been based on common sense, not been based upon sound principles of law, but rather have been based upon the overriding notion that no matter what, someone who is hurt must recover. Even if he cannot find anybody that did anything wrong, and even if the party you recover against did not do anything wrong, if persons can find somebody that has deep enough pockets and they have something to do with the incident, then nail them.

That has resulted in a lot of people in our country deciding not to get into certain forms of business. Last year, fortunately, the Congress amended the law very slightly with respect to the manufacturer of airplanes because nobody was building airplanes in this country anymore. I am talking not about the big commercial jets, but the planes that a person would fly on the weekend, for example, or a small plane for business purposes.

Companies have stopped making things and people have stopped selling things because of this potential liability. That is why it is important to reform the law of product liability and why this legislation is so important.

I suggest, Mr. President, that we must ultimately go beyond product liability to comprehensively reform the entire civil justice system, and that this bill will be one of the ways in which we can do that.

In effect, we must repeal the regressive tort tax, as someone called it, that depletes our economy, raises prices, destroys jobs, stifles innovation, and reduces exports, making America less competitive in the world. This tort tax creates a capricious legal lottery that stimulates the filing of lawsuits.

One result, a very important result, is that it causes doctors to add billions to our national medical care costs each year because they must practice defensive medicine. They must order unnecessary tests or perform unnecessary procedures simply to cover the possibility that someone could claim that that last procedure or test was necessary to prevent some kind of harm to a patient; in other words, to do defensive medicine rather than the medicine that makes the most sense.

In Arizona, my own State, Mr. President, medical malpractice premiums have increased by nearly 200 percent just in the last 14 years. That is obviously reflective of the cost of the medical care which we provide. It is one of the areas that requires specific attention as we reform health care in this country today.

Attorney's fees and transaction costs are increasingly a large part of litigation expenses; in fact, approaching 50 percent. I think people would be interested to note, those who argue that we would be denying victims the right to recover, that, in fact, half of the money collected or nearly half of it goes to the lawyers—not to the victims.

The U.S. Department of Commerce has estimated that only 40 cents of each dollar expended in product liability suits ultimately reaches the victims. A Rand Corp. study showed that 50 cents of each liability dollar does not go to victims but to attorney's fees and other transaction costs.

Toward the goal of national legal reform, S. 565 represents a small but critical first step. This bill and the House bill, H.R. 956, contain many similar provisions.

They are, very quickly, a product seller provision that extends coverage of the bill to rented and leased products as well; a drug and alcohol defense provision does not go far enough; a provision creating incentive for biomaterial suppliers to make available raw material for use in medical implant devices sponsored by my colleague from Arizona, JOHN MCCAIN, and a very important provision; and finally, a provision reducing judgment amounts where a product has been misused or altered.

Beyond the provisions, the House bill is significantly broader in scope, and I support most of its additional provisions. It is my understanding this body will consider more comprehensive legal reform legislation later this year: Senator HATCH's Civil Justice Reform Act of 1995, and Senator MCCONNELL's Lawsuit Reform Act of 1995, and I will support those efforts.

I will plan to offer and support amendments to S. 565 that would broaden the legislative scope of this bill, more consistent with the House product. For example, I support expanding the scope of Senate bill 565, punitive damage reform provisions of three times a claimant's economic loss or $250,000, whichever is greater, now applicable only to product liability actions, to all civil actions.

It is important in the medical malpractice arena, in particular, where we very seldom have a product that has created a problem, to limit the liability of the physician or hospital or other health care provider in order to contain the cost of health care.

Second, I would support expanding the scope of S. 565, joint and several liability reform with respect to noneconomic damages for product liability actions to all civil actions, which I spoke to a moment ago. I will be offering an amendment to that effect.

Third, expanding Senate bill 565's $250,000 limitation on noneconomic damages in product liability actions to medical malpractice actions, as well.

I will also support the amendment of my colleague from Michigan regarding attorney disclosure requirements which would require that attorneys appearing in Federal court fully disclose at the time of retention all of the clients options, including a clear statement of the terms of compensation, and to provide an itemized accounting at the termination of representation.

I will be introducing an amendment that would preclude punitive damages from being awarded if the health care producer of a medical device or drug successfully completes the FDA approval process, unless there is a situation of fraud involved. I also believe that there may be three other amendments necessary to this bill in order to preclude it from, I would say, Mr. President, having fatal flaws.

There is one provision which relates to alternative dispute resolution where the parties seek to resolve their dispute outside of the tort lawsuit, and try to shorten the time and reduce the expenses. There is a penalty involved for the defendant in one of those situations. I believe that those provisions should be fair, equal to both the plaintiffs and the defendant, and that if there is any penalty attached for not agreeing to participate in an alternative dispute resolution mechanism, that that penalty should be provided both equally to the plaintiffs and the defendant, rather than only being a penalty for defendants.

Second, there is a good provision that says, where a plaintiff has been impaired by drug or alcohol use and is therefore more than 50 percent culpable or responsible—in some States it is called contributory negligence, where plaintiff himself or herself is at least half responsible for the injuries—there could not be recovery. It seems to me that the principle is sound but the limitation is too restrictive. Whether it is because of drug or alcohol use or because of lack of care or

concern or negligence, if plaintiff is 50 percent responsible then either there should be comparative negligence or contributory negligence should preclude a recovery. It should not just be limited in that one situation. In fact, I can think of far more egregious actions on the part of the plaintiff than simply being drunk or under the influence of alcohol.

Third, there is a provision that I spoke to earlier that says that, in a product liability case, the seller should not have to pay for the manufacturer's liability. It seems to me that should apply in any kind of situation. In no case should the seller be required to pay for the manufacturer's liability simply because you cannot find the manufacturer or the manufacturer does not have insurance to pay. If the seller was not responsible in any way, then the seller should not have to pay the damages.

As I said, notwithstanding these areas in which I believe S. 565 could be broadened, I think it is important we not allow the perfect to be the enemy of the good, and therefore we should support whatever reforms we can accomplish. In the last 5 years cloture motions have effectively barred votes on the merits of bills similar to this that were supported by a majority of the Senate. We should not allow this to happen again.

So I would like to close by addressing one of the most frequently cited and most unpersuasive arguments employed by the opponents of the national legal reform, only one, but I think it is important to establish this right up front because it has the superficial sense of States rights about it and suggests that those of us who support this legislation do not trust the States.

As someone who is a very strong States' rights supporter, who is very interested in allowing local decisionmaking, I want to make very clear our basis for supporting this legislation. This legislation would not prohibit a State from enacting more restrictive provisions so we are not saying the Federal Government should take over this area of law to the exclusion of the States at all. We are simply establishing a standard. If the States wish to be more restrictive they are entitled to do so.

It is not appropriate to argue it would be an unconstitutional preemption of State authority if we were to act in this fashion. The commerce clause clearly grants the United States the authority to act. No individual State can solve the problems created by abusive litigation of the kind we have been discussing here and that is particularly true with product liability where a product may be manufactured in one State, sold in another State, and cause injury in a third State. In fact, Government figures establish that on average over 70 percent of the goods manufactured in one State are shipped out of State for sale and use. So it is clear that a national solution is required and justified by the fundamental interstate character of produce commerce.

The threat of disproportionate unpredictable punitive damages awards exerts an impact far beyond the borders of individual States, and this threat influences investment strategies, it dampens job creation and prevents new products from reaching the marketplace. In an increasingly integrated national and international economy, the confusing inconsistent patchwork of State liability awards has created a major obstacle to America's economic strength. And I think this is precisely the kind of problem the Framers gave Congress the power to address through the commerce clause of the U.S. Constitution. The Framers clearly realized the National Government needed the power to prevent the chaos that would result if every State could regulate interstate commerce. That is one of the reasons, as a matter of fact, that the Articles of Confederation were required to be amended.

Opponents of legal reform profess concern about the preemption of State law and interference with States rights, but I note that many of these same interests are enthusiastic supporters of intrusive Federal regulations imposed on the States by OSHA, by the FDA, by the EPA, and other Federal regulators. In truth, States rights is not what is being defended here but rather the status quo or else.

Why is the multimillion-dollar litigation industry the only segment of the economy that opponents of legal reform believe is beyond the reach of Federal law? Legal reform will not cause the creation of a single new Federal program or the expenditure of a single new appropriation. Legal reform will not impose new taxes or new regulations on our citizens. Legal reform will simply create clear, consistent legal standards covering civil actions brought in State and Federal court. It will enhance the essential principle of due process and, as the U.S. Supreme Court has said, due process, criminal and civil, is fundamental to our concept of ordered liberty.

So, Mr. President, I hope we keep these thoughts in mind as we debate this important, and as I said at the beginning, historic legislation, and that in the end we will have found the wisdom and courage to make these reforms so we can pass them on to the President for his signature and begin the process of restoring more sensibility, more common sense, more fairness into the U.S. tort system.

I yield the floor, Mr. President.

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

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

MORNING BUSINESS

Mr. KYL. Mr. President, I have several announcements and requests for unanimous consent. I would note all of these have been cleared with the minority and therefore I wish to make them at this time.

First, Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

MESSAGE FROM THE HOUSE RECEIVED DURING THE ADJOURNMENT

Under the authority of the order of January 4, 1995, the Secretary of the Senate on April 7, 1995, during the adjournment of the Senate received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 889. An act making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes;

S. 178. An act to provide for the safety of journeymen boxers, and for other purposes; and

S. 244. An act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

The enrolled bills were signed on April 7, 1995 by the President pro tempore (Mr. THURMOND).

Under the authority of the order of January 4, 1995, the Secretary of the Senate on April 12, 1995, during the adjournment of the Senate received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

H.R. 1345. An act to eliminate budget deficits and management inefficiencies in the government of the District of Columbia through the establishment of the District of Columbia Financial Responsibility and Management Assistance Authority, and for other purposes.

The enrolled bills were signed on April 12, 1995 by the President pro tempore (Mr. THURMOND).

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 and two treaties which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

H.R. 483. An act to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 1380. An act to provide a moratorium on certain class action lawsuits relating to the Truth in Lending Act.

REPORTS OF COMMITTEES SUBMITTED DURING ADJOURNMENT

Under the authority of the order of the Senate of April 6, 1995, the following reports of committees were submitted on April 18, 1995:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 719: A bill to provide for the conservation, management, and administration of certain parks, forests, and other areas, and for other purposes (Rept. No. 104–49).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 694: A bill entitled the ''Minor Boundary Adjustments and Miscellaneous Park Amendments Act of 1995'' (Rept. No. 104–50).

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 268: A bill to authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes (Rept. No. 104–51).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 534: A bill to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes (Rept. No. 104–53).

By Mr. McCAIN, from the Committee on Indian Affairs, without amendment:

S. 441: A bill to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes (Rept. No. 104–53).

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 84: A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Bagger*, and for other purposes (Rept. No. 104–54).

S. 172: A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *L.R. Beattie* (Rept. No. 104–55).

S. 212: A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Shamrock V* (Rept. No. 104–56).

S. 213: A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Endeavour* (Rept. No. 104–57).

S. 278: A bill to authorize a certificate of documentation for the vessel *Serenity* (Rept. No. 104–58).

S. 279: A bill to authorize a certificate of documentation for the vessel *Why Knot* (Rept. No. 104–59).

S. 475: A bill to authorize a certificate of documentation for the vessel *Lady Hawk* (Rept. No. 104–60).

S. 480: A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Gleam* (Rept. No. 104–61).

S. 482: A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Emerald Ayes* (Rept. No. 104–62).

S. 492: A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Intrepid* (Rept. No. 104–63).

S. 493: A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Consortium* (Rept. No. 104–64).

S. 527: A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Empress* (Rept. No. 104–65).

S. 528: A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for three vessels (Rept. No. 104–66).

S. 535: A bill to authorize the Secretary of Transportation to issue certificates of documentation with appropriate endorsement for employment in coastwise trade for each of 2 vessels named *Gallant Lady*, subject to certain conditions, and for other purposes (Rept. No. 104–67).

S. 561: A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle*, and for other purposes (Rept. No. 104–68).

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 565: A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes (Rept. No. 104–69).

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. BROWN:

S. 720. A bill to amend rule 11 of the Federal Rules of Civil Procedure, relating to representations in court and sanctions for violating such rule, and for other purposes; to the Committee on the Judiciary.

By Ms. SNOWE (for herself and Mr. COHEN):

S. 721. A bill to impose a moratorium on sanctions under the Clean Air Act with respect to marginal and moderate ozone nonattainment areas, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. NICKLES (for himself, Mr. INHOFE, Mr. DOLE, Mr. DASCHLE, Mr. HATCH, Mr. HELMS, Mr. BROWN, Mr. SMITH, Mrs. FEINSTEIN, Mr. DODD, Mr. BYRD, Mr. CONRAD, Mr. FORD, Mr. KOHL, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. ROBB, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BENNETT, Mr. BOND, Mr. BURNS, Mr. CAMPBELL, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DOMENICI, Mr. FAIRCLOTH, Mr. FRIST, Mr. GORTON, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mrs. HUTCHISON, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KYL, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. McCAIN, Mr. McCONNELL, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. PRESSLER, Mr. ROTH, Mr. SANTORUM, Mr. SHELBY, Mr. SIMPSON, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, and Mr. WARNER):

S. Res. 110. A resolution expressing the sense of the Senate condemning the bombing in Oklahoma City.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROWN:

S. 720. A bill to amend rule 11 of the Federal Rules of Civil Procedure, relating to representations in court and sanctions for violating such rule, and for other purposes; to the Committee on the Judiciary.

LEGISLATION TO DETER FRIVOLOUS LITIGATION

● Mr. BROWN. Mr. President, the United States has become the most litigious society in history. The filing of frivolous or baseless claims has begun to jeopardize our system of redress for legitimate claims. Neither the parties nor the courts can or should shoulder the costs of the frivolous, baseless, or harassing suits.

Last Congress, changes were proposed to rule 11. By law, unless Congress acted to prevent or modify those changes, they would automatically become law. This body refused to consider the changes to rule 11. Protection against frivolous lawsuits included under rule 11 were repealed by Congress's refusal to act. As a consequence, rule 11 no longer provides clear deterrance to frivolous lawsuits. The changes of last year in effect protect the abuser, not the abused.

If this Congress wishes to address civil justice reform, the first place to start is with rule 11 and frivolous litigation.

I have introduced a bill that would breath life back into rule 11 and once again deter those who abuse the court system.

Last Congress, rule 11 was changed in significant ways. Under the new, ineffective rule 11, if a court finds the rule was violated, sanctions are no longer

mandatory—they are now permissive. In other words, if a court finds a party was using the court system to harass another party or was filing papers or charges which were untrue, the court does not have to sanction the guilty party.

Under the new, ineffective rule 11, a party is given a 21-day safe harbor in which the party can file harassing motions and then withdraw them after they are exposed without fear of sanction.

Under the new, ineffective rule 11, a party may allege facts which the party does not know to be true.

The new rule 11 says: Sue first and ask questions later. The bill we are introducing today puts teeth back in rule 11 so that lawyers and parties will be deterred from filing baseless or harassing lawsuits.

Why the rule was changed to begin with is not clear. According to a Federal Judiciary Center study, 80 percent of district judges believe rule 11 has an overall positive effect and should have been retained in the then-present form, 95 percent believed that the rule had not impeded development of the law, and 75 percent said that benefits justify the expenditure of judicial time.

Rule 11 can be the most effective tool Congress has to control litigation abuses and frivolous lawsuits. At a time when the Federal courts are overburdened with filings, we should not accommodate baseless claims.

The bill makes four important, restorative changes to rule 11. First, it requires that if rule 11 is violated, sanctions are mandatory. Second, it requires that there be some factual or evidentiary support for factual contentions. Third, it returns the preference for awarding attorneys' fees to the innocent party. Fourth, it clarifies that attorneys' fees can be awarded against attorneys.

We have limited resources for the Federal courts. These four restorative changes aim to make sure the resources are properly allocated to resolve legitimate disputes. Swift action against frivolous lawsuits saves time and money, and promotes public respect for the integrity of the courts.●

By Ms. SNOWE (for herself and Mr. COHEN):

S. 721. A bill to impose a moratorium on sanctions under the Clean Air Act with respect to marginal and moderate ozone nonattainment areas, and for other purposes; to the Committee on Environment and Public Works.

LEGISLATION IMPOSING A 1-YEAR MORATORIUM UNDER THE CLEAN AIR ACT

Ms. SNOWE. Mr. President, today I am introducing legislation that will impose a 1-year moratorium on sanctions under the Clean Air Act for States that have marginal or moderate nonattainment areas within their borders.

All across the country, from Maine to Texas, citizens are voicing their dissatisfaction with some of the requirements of the Clean Air Act Amendments of 1990. In particular, they are objecting to the imposition of enhanced vehicle inspection and maintenance programs. Many governors, frustrated over the difficulty of implementing this and other measures mandated by the act, have joined in this chorus of dissatisfaction and discontent, and have petitioned the Environmental Protection Agency for flexibility and assistance in meeting the act's requirement. Neither the people nor the Governors question the act's goals—clean and healthy air for everyone. But they do question the equity and reasonableness of the way that the act has been implemented to date.

In response to the widespread criticisms, the Administrator of EPA, Carol Browner, announced late last year that the Agency would provide the States with the greatest possible flexibility in implementing the act. She singled the enhanced inspection and maintenance program out for special mention, stating that EPA would review alternatives to a centralized enhanced I&M program, which had been required initially.

Although the EPA deserves credit for making a commitment to greater flexibility, much uncertainty and trepidation regarding the act's requirements remains. Maine provides a stark example of the serious problems that still exist and that must be addressed.

My home State led the Nation in implementing the enhanced inspection and maintenance program. Maine began its program 6 months ahead of time, on July 1, 1994, to avoid situations in which motorists might face long lines or technical problems at testing facilities in the middle of winter. The program was beset with problems almost before it began, with motorists complaining about long lines, inconsistent test results, and ill-informed attendants. In combination with serious concerns about potential repair costs, and legitimate questions about the need for such extensive tests in a small, sparsely populated State, these problems created a swell of popular opposition to the program.

By September, the State legislature and the Governor decided to suspend implementation of the program until March 1, 1995. People in other States facing the enhanced I&M requirements, hearing about the problems with Maine's program, and realizing what the enhanced program would require of them, began to express concerns as well. Their elected officials at the State and Federal levels relayed there concerns to the EPA. In response to the many criticisms coming from States across the country, EPA made its December announcement on alternatives and flexibility.

Unfortunately, since that time, little has been settled. There is great confusion in Maine, and probably other States, about exactly what will be required of them, especially with regard to ozone nonattainment. Not only is it unclear what kind of emissions testing program will be acceptable, but questions persist about whether states subject to significant transported polluted air will be able to account for this transported air in their plans to attain the federal ozone standard.

Maine sits at the tail and of the Northeast ozone transport region, which includes the 11 Northeastern States and the District of Columbia. No area in the State is classified higher than moderate nonattainment. But under the Clean Air Act, Maine is required to reduce volatile organic compounds by 15 percent in all of these areas. Given the uncertainty and confusion surrounding emissions inspection and the act's requirements for ozone in general, the State has not yet adopted its 15 percent reduction plan, and it faces a statutory deadline of July 26, 1995. After that date, EPA is required by law to impose stiff sanctions, either withholding highway construction funds, or imposing a strict 2-to-1 offset requirement for new sources of emissions.

With the threat of painful sanctions weighing heavily over their heads, the Governor and the Maine Legislature are scrambling to devise a VOC reduction plan and an alternative I&M program. But people in Maine are understandably reluctant to move forward with expensive and complicated emissions reductions measures if a significant amount of the air that accounts for the nonattainment classification is transported in from outside state boundaries. Yet, the data that could determine the amount of transported pollution is unavailable at the present time. Maine is caught between a rock and a hard place. If it moves forward, it could impose burdensome requirements on its citizens without knowing the full extent to which they contribute to the pollution in Maine. If they do not proceed by July 26, the EPA will be forced to levy serious penalties. And they do not know, in precise terms, what is acceptable to EPA now, and what will be acceptable 6 months from now.

Maine faces similar uncertainty with regard to enhanced emissions inspection and maintenance programs. Because Maine is included in the Northeast ozone transport region, the act mandates that, at a minimum, the cities of Portland and Kittery implement the enhanced emissions testing program that has generated intense controversy in Maine and other States across the country. My legislation protects States from sanctions related to this requirement as well, provided the area subject to the enhanced I&M requirement has been designated as marginal or moderate nonattainment.

Mr. President, I do not believe that States like Maine should be required to develop these sensitive programs under the duress of Federal Sanctions. They should have sufficient time to sort out the new developments on the issue, to collect data on transported air, and to

negotiate with the EPA on a range of acceptable compliance measures. In the absence of a more deliberative process that allows States to carefully analyze all of their options, we could provoke a repeat of last year, when States like Maine tried to implement programs but met stiff public opposition. That kind of scenario will not bring us any closer to cleaner air.

States need a temporary break from the sanctions threat, and my bill will provide that break. It establishes a 1-year moratorium on sanctions and penalties related to marginal and moderate ozone nonattainment areas. It applies only to States, and it simply gives the States with these areas a reprieve from the Clean Air Act's heavy-handed sanctions so that they are not forced to act too hastily in what appears to be an evolving regulatory landscape.

Mr. President, my bill offers a reasonable approach to a major controversy affecting many States. I think it will advance the cause of clean air by allowing States to develop emissions reductions plans that have some credibility in the eyes of the public. I invite my colleagues from other States facing similar problems to join me in cosponsoring this legislation, and to work with me for prompt passage of it.

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. 721

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

SECTION 1. OZONE NONATTAINMENT AREAS.

(a) IN GENERAL.—During the 1-year period beginning on the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall not initiate or continue in effect an enforcement action against a State with respect to an area that, before, on, or after that date, is designated nonattainment for ozone and classified as a Marginal Area or Moderate Area under section 181 of the Clean Air Act (42 U.S.C. 7511), including such an area that is located in the ozone transport region established by section 184(a) of that Act (42 U.S.C. 7511c(a)).

(b) DEFINITION.—In this section, the term ''enforcement action'' includes—

(1) the withholding of a grant under section 105 of the Clean Air Act (42 U.S.C. 7405);

(2) the promulgation of a Federal implementation plan under section 110(c) of the Clean Air Act (42 U.S.C. 7410);

(3) the imposition of a sanction under section 110(m) or 179 of the Clean Air Act (42 U.S.C. 7410(m), 7509); and

(4) any other action intended to obtain compliance (unless the action is agreed to by the State) or punish noncompliance with a requirement applicable to an area described in subsection (a) under the Clean Air Act (42 U.S.C. 7401 et seq.).

ADDITIONAL COSPONSORS

S. 216

At the request of Mr. INOUYE, the name of the Senator from Colorado [Mr. CAMPBELL] 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. 245

At the request of Mr. COHEN, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Wisconsin [Mr. KOHL], and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 245, a bill to provide for enhanced penalties for health care fraud, and for other purposes.

S. 254

At the request of Mr. LOTT, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 254, A bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the U.S. merchant marine during World War II.

S. 258

At the request of Mr. PRYOR, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 277

At the request of Mr. D'AMATO, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 277, a bill to impose comprehensive economic sanctions against Iran.

S. 332

At the request of Mr. CONRAD, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 332, a bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Kentucky [Mr. MCCONNELL], the Senator from Idaho [Mr. CRAIG], the Senator from New Hampshire [Mr. SMITH], and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 390

At the request of Mr. BIDEN, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 390, a bill to improve the ability of the United States to respond to the international terrorist threat.

S. 448

At the request of Mr. GRASSLEY, the names of the Senator from Arizona [Mr. KYL], the Senator from Maine [Mr. COHEN], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 448, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes.

S. 469

At the request of Mr. GREGG, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 469, a bill to eliminate the National Education Standards and Improvement Council and opportunity-to-learn standards.

S. 512

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 512, a bill to amend title XVIII of the Social Security Act to provide for a 5-year extension of the Medicare-dependent, small, rural hospital payment provisions, and for other purposes.

S. 526

At the request of Mr. GREGG, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 526, a bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes.

S. 559

At the request of Mr. SIMPSON, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 559, a bill to amend the Lanham Act to require certain disclosures relating to materially altered films.

S. 565

At the request of Mr. ROCKEFELLER, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 565, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 588

At the request of Mr. DASCHLE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 588, a bill to amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits.

S. 692

At the request of Mr. GREGG, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 692, a bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes.

SENATE JOINT RESOLUTION 32

At the request of Mr. HATCH, the names of the Senator from Wyoming [Mr. SIMPSON] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of Senate Joint Resolution 32, a joint resolution expressing the concern of the Congress regarding certain recent remarks that unfairly and inaccurately maligned the integrity of the Nation's law enforcement officers.

SENATE RESOLUTION 97

At the request of Mr. THOMAS, the names of the Senator from Illinois [Mr.

SIMON] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of Senate Resolution 97, a resolution expressing the sense of the Senate with respect to peace and stability in the South China Sea.

AMENDMENT NO. 568

At the request of Mr. WARNER the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of amendment No. 568 intended to be proposed to S. 383, a bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems.

SENATE RESOLUTION 110—CONDEMNING THE BOMBING IN OKLAHOMA CITY

Mr. NICKLES (for himself, Mr. INHOFE, Mr. DOLE, Mr. DASCHLE, Mr. HELMS, Mr. BROWN, Mr. SMITH, Mrs. FEINSTEIN, Mr. DODD, Mr. BYRD, Mr. CONRAD, Mr. FORD, Mr. KOHL, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. ROBB, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BENNETT, Mr. BOND, Mr. BURNS, Mr. CAMPBELL, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DOMENICI, Mr. FAIRCLOTH, Mr. FRIST, Mr. GORTON, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mrs. HUTCHISON, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KYL, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. PRESSLER, Mr. ROTH, Mr. SANTORUM, Mr. SHELBY, Mr. SIMPSON, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, and Mr. WARNER) submitted the following resolution; which was considered:

S. RES. 110

Whereas, on Wednesday, April 19, 1995, a car bomb exploded outside the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, collapsing the north face of this nine-story concrete building, killing and injuring innocent and defenseless children and adults;

Whereas, authorities are calling this the deadliest terrorist attack ever on U.S. soil;

Whereas, federal law authorizes the imposition of the death penalty for terrorist murder; and,

Whereas, additional anti-terrorism measures are now pending for consideration in the United States Senate: Now, therefore, be it

Resolved, That the Senate of the United States:

(1) Condemns, in the strongest possible terms, the heinous bombing attack against innocent children and adults at the Alfred P. Murrah Federal Building in Oklahoma City;

(2) Sends its heartfelt condolences to the families, friends, and loved ones of those whose lives were taken away by this abhorrent and cowardly act; and expresses its hopes for the rapid and complete recovery of those wounded in the bombing;

(3) Applauds all those courageous rescue and volunteer workers who are giving unselfishly of themselves and commends all law enforcement officials who are working determinedly to bring the perpetrators to justice;

(4) Supports the President's and the United States Attorney General's position that federal prosecutors will seek the maximum penalty allowed by law, including the death penalty, for those responsible;

(5) Commends the rapid actions taken by the President to provide assistance to the victims of the explosion and for promptly beginning an investigation to find the perpetrators of this crime, and it urges the President to use all necessary means to continue this effort until the perpetrators and their accomplices are found and appropriately punished;

(6) Will expeditiously approve legislation to strengthen the authority and resources of all federal agencies involved in combating such acts of terrorism.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY REFORM ACT

GORTON (AND OTHERS) AMENDMENT NO. 596

Mr. GORTON (for himself, Mr. ROCKEFELLER, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, Mr. CHAFEE, Mr. HATFIELD, Mr. LUGAR, and Mr. FRIST) proposed an amendment to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act of 1995''.

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CLAIMANT.—The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means an amount equal to the sum of—

(A) the amount paid to an employee as workers' compensation benefits; and

(B) the present value of all workers' compensation benefits to which the employee is or would be entitled at the time of the determination of the claimant's benefits, as determined by the appropriate workers' compensation authority for harm caused to an employee by a product.

(3) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term ''clear and convincing evidence'' is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(5) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(8) INSURER.—The term ''insurer'' means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(9) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(10) NONECONOMIC LOSS.—The term ''noneconomic loss''—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(11) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(13) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(14) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(15) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(16) TIME OF DELIVERY.—The term ''time of delivery'' means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

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

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

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

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

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

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—

(1) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(2) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in paragraph (3), not later than 10 days after the service of an offer to proceed under paragraph (1), an offeree shall file a written notice of acceptance or rejection of the offer.

(3) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in paragraph (2), extend the period for filing a written notice under such paragraph for a period of not more than 60 days after the date of expiration of the period specified in paragraph (2). Discovery may be permitted during such period.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—

(1) IN GENERAL.—The court shall assess reasonable attorney's fees (calculated in accordance with paragraph (2)) and costs against the offeree, incurred by the offeror during trial if—

(A) a defendant as an offeree refuses to proceed pursuant to the alternative dispute resolution procedure referred to subsection (a)(1);

(B) final judgment is entered against the defendant for harm caused by the product that is the subject of the action; and

(C) the refusal by the defendant to proceed pursuant to such alternative dispute resolution was unreasonable or not made in good faith.

(2) REASONABLE ATTORNEY'S FEES.—For purposes of this subsection, a reasonable attorney's fee shall be calculated on the basis of an hourly rate, which shall not exceed the hourly rate that is considered acceptable in the community in which the attorney practices law, taking into consideration the qualifications and experience of the attorney and the complexity of the case.

(c) GOOD FAITH REFUSAL.—In determining whether the refusal of an offeree to proceed pursuant to the alternative dispute procedure referred to in subsection (a)(1) was unreasonable or not made in good faith, the court shall consider—

(1) whether the case involves potentially complicated questions of fact;

(2) whether the case involves potentially dispositive issues of law;

(3) the potential expense faced by the offeree in retaining counsel for both the alternative dispute resolution procedure and to litigate the matter for trial;

(4) the professional capacity of available mediators within the applicable geographic area; and

(5) such other factors as the court considers appropriate.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have

failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(14)(B)) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—The amount of punitive damages that may be awarded to a claimant in any product liability action that is subject to this title shall not exceed 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF EITHER PARTY.—

(1) IN GENERAL.—At the request of either party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in the separate proceeding under paragraph (1)—

(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and

(ii) shall not include evidence of the overall assets of the defendant.

SEC. 108. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 110. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN CONSENT.—Except as provided in subparagraph (C)—

(i) an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the insurer; and

(ii) no release to or agreement with the manufacturer or product seller described in clauses (i) through (iv) of subparagraph (A) shall be valid or enforceable for any purpose without the consent of the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 111. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1995''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) QUALIFIED SPECIALIST.—With respect to an action, the term ''qualified specialist'' means a person who is qualified by knowledge, skill, experience, training, or education in the specialty area that is the subject of the action.

(9) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(10) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(11) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if the biomaterials supplier—

(1) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(A) the manufacture of the implant; and

(B) the entrance of the implant in the stream of commerce; and

(2) subsequently resold the implant.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—The procedural requirements described in paragraphs (2) and (3) shall apply to any action by a claimant against a biomaterials supplier that is subject to this title.

(2) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(A) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(B) an action against the manufacturer is barred by applicable law.

(3) AFFIDAVIT.—At the time the claimant brings an action against a biomaterials supplier the claimant shall be required to submit an affidavit that—

(A) declares that the claimant has consulted and reviewed the facts of the action with a qualified specialist, whose qualifications the claimant shall disclose;

(B) includes a written determination by a qualified specialist that the raw materials or component parts actually used in the manufacture of the implant of the claimant were raw materials or component parts described in section 205(d)(1), together with a statement of the basis for such a determination;

(C) includes a written determination by a qualified specialist that, after a review of the medical record and other relevant material, the raw material or component part supplied by the biomaterials supplier and actually used in the manufacture of the implant was a cause of the harm alleged by claimant, together with a statement of the basis for the determination; and

(D) states that, on the basis of review and consultation of the qualified specialist, the claimant (or the attorney of the claimant) has concluded that there is a reasonable and meritorious cause for the filing of the action against the biomaterials supplier.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This Act shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this title.

NOTICE OF HEARING

SUBCOMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. ROTH. Mr. President, I would like to announce that the Subcommittee on Post Office and Civil Service, of the Committee on Governmental Affairs, will hold a hearing on May 8, 1995, to review the Ramspeck Act.

The hearing is scheduled for 10 a.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Pat Raymond, staff director, at 224–2254.

ADDITIONAL STATEMENTS

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

• Mr. MCCONNELL. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for Jennifer R. Markley, a member of the staff of Senator MURKOWSKI, to participate in a program in Japan sponsored by the Japan Center for International Exchange, Inc., April 16–23, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Markley in this program.

The select committee received notification under rule 35 for Mark Foulon, a member of the staff of Senator BRADLEY, to participate in a program in Munich sponsored by the Herbert Quandt Stiftung May 18–21, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Foulon this program.

The select committee received notification under rule 35 for Marc Thiessen, a member of the staff of Senator HELMS to participate in a program in Taiwan sponsored by the Tamkang University April 9–16, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Thiessen in this program.

The select committee received notification under rule 35 for Gregg Rickman, a member of the staff of Senator D'AMATO, to participate in a program in Taiwan sponsored by the Tamkang University April 9–16, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Rickman in this program.•

The select committee received notification under rule 35 for Mary Jo Archibold, a member of the staff of Senator GRASSLEY, to participate in a program in Chile sponsored by the Chilean-American Chamber of Commerce from April 19–21, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Archibold in this program.

The select committee received notification under rule 35 for Dave Balland, a member of the staff of Senator SIMPSON, to participate in a program in Japan sponsored by the Japan Center for International Exchange from April 16–23, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Dave Balland in this program.

The select committee received notification under rule 35 for Kraig Siracuse, a member of the staff of Senator D'AMATO, to participate in a program in Chile sponsored by the Chilean-American Chamber of Commerce from April 16–20, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Siracuse in this program.

The select committee received notification under rule 35 for William Triplett, a member of the staff of Senator BENNETT, to participate in a program in Taiwan sponsored by the Institute for National Policy Research from April 12–14, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Triplett in this program.

The select committee received notification under rule 35 for Jeff Conway, a member of the staff of Senator EXON, to participate in a program in Taiwan sponsored by the Tamkang University from April 17–24, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Conway in this program.

BUDGET SCOREKEEPING REPORT

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

This report shows the effects of congressional action on the budget through April 7, 1995. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the concurrent resolution on the budget (H. Con. Res. 218), show that current level spending is below the budget resolution by $5.6 billion in budget authority and $1.4 billion in outlays. Current level is $0.5 billion over the revenue floor in 1995 and below by $9.5 billion over the 5 years 1995–99. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $238.0 billion, $3.1 billion below the maximum deficit amount for 1995 of $241.0 billion.

Since my last report, dated March 27, 1995, the Congress has cleared, and the President has signed, the 1995 Emergency Supplementals and Rescissions Act, Public Law 104–6 and the Self-Employed Health Insurance Act, Public Law 104–7. These actions changed the current level of budget authority, outlays and revenues.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 24, 1995.

Hon. PETE DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report for fiscal year 1995 shows the effects of Congressional action on the 1995 budget and is current through April 7, 1995. The estimates of budget authority, outlays and revenues are consistent with the technical and economic assumptions of the 1995 Concurrent Resolution on the Budget (H. Con. Res. 218). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements of Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated March 27, 1995, the Congress has cleared, and the President has signed, the 1995 Emergency Supplementals and Rescissions Act (Pub. L. 104–6) and the Self-Employed Health Insurance Act (Pub. L. 104–7). These actions changed the current level of budget authority, outlays and revenues.

Sincerely,

JUNE E. O'NEILL.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1995, 104TH CONGRESS, 1ST SESSION, AS OF CLOSE OF BUSINESS APRIL 7, 1995

[In billions of dollars]

	Budget resolution (H. Con. Res. 218) [1]	Current level [2]	Current level over/ under resolution
On-budget:			
Budget authority	$1,238.7	$1,233.1	−5.6
Outlays	1,217.6	1,216.2	−1.4
Revenues:			
1995	977.7	978.2	0.5
1995–99	5,412.2	5,405.7	−9.5
Deficit	241.0	238.0	−3.1
Debt subject to limit	4,965.1	4,746.8	−218.3
Off-budget:			
Social Security outlays:			
1995	287.6	287.5	−0.1
1995–99	1,562.6	1,562.6	*0
Social Security revenues::			
1995	360.5	360.3	−0.2
1995–99	1,998.4	1,998.2	−0.2

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

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

*Less than $50 million.

Note: Detail may not add due to rounding.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 104TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1995 AS OF CLOSE OF BUSINESS APRIL 7, 1995

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions			
Revenues	.....	.....	978,466
Permanents and other spending legislation	750,307	706,236	.....
Appropriation legislation	738,096	757,783	.....
Offsetting receipts	(250,027)	(250.027)	.....
Total previously enacted	1,238,376	1,213,992	978,466
Enacted this session			
1995 Emergency Supplementals and Rescissions Act (Pub. L. 104–6)	(3,386)	1,008)	.....
Self-Employed Health Insurance Act (Pub. L. 104–7)	.....	.....	(248)
Total enacted this session	(3,386)	1,008)	(248)
Entitlements and mandatories			
Budget resolution baseline estimates of appropriated entitlements other mandatory programs not yet enacted	(1,887)	3,189	.....
Total current level [1]	1,233,103	1,216,173	978,218
Total budget resolution	1,238,744	1,217,605	977,700
Amount remaining:			
Under budget resolution	5,641	1,432	.....
Over budget resolution	.....	.....	518

[1] In accordance with the Budget Enforcement Act, the total does not include $3,905 million in budget authority and $7,442 million in outlays in funding for emergencies that have been designated as such by the President and the Congress, and $841 million in budget authority and $917 million in outlays for emergencies that would be available only upon an official budget request from the President designating the entire amount requested as an emergency requirements.

* Less than $500 thousand.

Notes: Numbers in parentheses are negative. Detail may not add due to rounding.●

TRIBUTE TO 1995 HUTCHISON BROWARD SENIOR HALL OF FAME INDUCTEES

● Mr. GRAHAM. Mr. President, I am delighted to recognize and congratulate a group of exemplary citizens upon their induction into the 1995 Dr. Nan S. Hutchison Broward Senior Hall of Fame. These 11 volunteers have shown enduring commitment to the community and have brought about positive change through their selfless concern for and dedication to helping others.

It gives me great pleasure to salute each of the 1995 inductees for their laudable accomplishments:

Elaine Appel has been a guardian ad litem and savior for numerous abused, neglected, and mentally and physically challenged children. With limitless energy, Ms. Appel has given hope to some of those most in need of a loving care giver.

Bernard Bernhardt has worked diligently to empower visually impaired citizens so that they might lead productive and independent lives. By also visiting many clients' homes, Mr. Bernhardt has brought assistance to some who might otherwise not have been able to benefit from his caring efforts.

Norman Birger is a dynamic volunteer with loyal devotion to the Southeast Focal Point Senior Center. Placing concern for the center before concern for himself, Mr. Birger has worked tirelessly to keep the center a vibrant resource for its members.

Constance Caloggero has displayed commendable concern for a wide variety of causes. Her commitment to seniors, women, children, and the infirm—while at the same time serving as Hillsboro Beach Commissioner—enables her to enjoy her work 7 days a week.

Oscar Davis has worked on diverse causes and is an example of limitless energy and devotion. From collecting and distributing food for the Salvation Army, to picking up visually impaired citizens so they may attend his talking-book club, to organizing health fairs and blood drives, Mr. Davis works vigorously in helping others.

Irving Friedman has used his caring nature and fine leadership abilities to help numerous seniors enjoy a better quality of life. By making support groups and counseling services available, by arranging for transportation to medical facilities, and by visiting seniors in hospitals and nursing homes, Mr. Friedman is a friend for those most in need of one.

Dr. Shirley Schaffer Kaufman has donated her professional skills for providing psychiatric and bereavement counseling to seniors and for improving their self-confidence. Dr. Kaufman's distinguishable fund-raising and leadership abilities in aiding the Area Agency on Aging have further assisted countless seniors.

Eleanor Locasicio has volunteered numerous hours to bringing care to numerous seniors. In using her personal and professional skills to evaluate infirm elderly in their homes, to instruct seniors in the AARP 55/Alive Mature Driving Course, and to protect wildlife and nature at Flamingo Gardens, Mrs. Locascio has shown a distinct concern for others and for the environment.

Juanita C. Phillips has worked diligently to bring children's and minority concerns to the forefront. Her endeavors with several children's organizations, as well as with the Democratic Black Caucus of Broward County, demonstrate her excellent leadership skills and commitment to helping others.

Edward Pudaloff has immersed himself into the plight of abused and neglected children. As the founder of HANDY—Helping Abused Neglected Dependent Youth—Mr. Pudaloff provides scholarships and such necessities as clothing, glasses, and medication to needy youths. He has further assisted children in working as a guardian ad litem and speaking for them in the courts.

Sybil Scheinman has translated her gift of and love for the theatre into fund-raising assistance for several charitable organizations. Ms. Scheinman's passion is performing, but she is just as enthusiastic helping at the ticket window or backstage—so long as she knows she is bringing happiness to others.

Florida and the residents of Broward County alike are fortunate to have been heir to the fine endeavors of these 11 vibrant, caring seniors who have bettered the community and served as an inspiration to others.●

ALABAMA BUSINESS CONNECTIONS 1995

● Mr. SHELBY. Mr. President, on June 27–29, more than 5,000 individuals and businesses will gather in Birmingham for Alabama Business Connections '95. This event is the Alabama Minority Supplier Development Council's largest and most important of the year. It represents an opportunity for suppliers and purchasing personnel from majority and government organizations to network and exchange information.

This important event also gives suppliers and purchasers the chance to develop mutually beneficial business opportunities. During the past 12 years, the Alabama Minority Supplier Development Council has represented a unique partnership of buyers and suppliers, serving as an important resource for identifying certified minority suppliers as well as a clearinghouse for business development news and purchasing information.

Mr. President, the members of the Alabama Minority Supplier Development Council acknowledge that suppliers can provide quality goods and services. The board of directors, membership and staff are committed to promoting economic development opportunities for minority businesses, and I am proud to recognize them here in the Senate for all of their important work. I wish them the best for a successful event in June and congratulate them on more than a decade of service to the members of Alabama's business community.●

TRIBUTE TO GINGER ADAMS

● Mr. MCCONNELL. Mr. President, today I rise to mourn the death and celebrate the life of Ms. Ginger Adams, whose life was cut tragically short at 20 after an automobile accident in western Kentucky.

Ginger Adams of Murray, KY, was an inspiration to all those who knew her. An honor student at Murray State University, Ms. Adams was also a popular campus leader and accomplished athlete.

Her love of athletics led her to join the nationally recognized Murray State cheerleading squad. Late last month, the squad accompanied the school's basketball team to its appearance in the NCAA Tournament in Tallahassee, FL. Returning home from the game, the van carrying Ginger and 12 other cheerleaders overturned on the highway injuring all aboard and, tragically, taking Ginger's life after a 2-week struggle in a Nashville hospital.

In his touching eulogy, Murray State University President Kern Alexander said of Ginger, ''We know she was a grand achiever and student leader, cheerleader, superb athlete and outstanding student, but the supreme

measure is not in those accomplishments. The measure of her life is in the great wealth of love and affection that was engendered in all she touched.''

Mr. President, please join me in extending our heartfelt sympathy and prayers to Ginger's parents, Hank and Joanna Adams, and to all those whose lives she touched. She will be missed very, very much.

Mr. President, I ask that Dr. Alexander's eulogy be printed in the RECORD.

The eulogy follows:

EULOGY OF GINGER ADAMS, DELIVERED BY DR. KERN ALEXANDER, PRESIDENT, MURRAY STATE UNIVERSITY

Ginger was given only 20 years, but her brief years were no measure of the importance of her life. She accomplished more in those few years than most persons achieve in 80. We know she was a grand achiever, student leader, cheerleader, superb athlete, outstanding student, but the supreme measure is not in those accomplishments, but rather the measure of her life is in the great wealth of love and affection that was engendered in all she touched; fellow students, sorority sisters, neighbors, her University, and her community.

Sir Christopher Wren, the architect who rebuilt London after the great fire, died. In his remembrance it was said, ''For his monuments look ye around.'' For Ginger's accomplishments ''look ye around.'' Look at all those of you here today who cherish and love her. This love and devotion to Ginger are her monuments and these are the monuments that are most enduring.

This outpouring here today of so many in this solemn ceremony is the ultimate measure of one's achievements on this earth. Here, they are Ginger's in abundance.

When death allies itself with youth and beauty it is the most difficult for us to understand.

When the most beautiful and radiant among us dies, we are all the more profoundly stricken with grief and wonderment as to its reasons and purposes.

When beauty dies our own limitations and frailties as human beings become more obvious and less comprehensible.

This week we lost the most beautiful and talented among us and none of us can understand. Consolation can only come in prayer to those who love Ginger, the prayer that:

''The Lord God will wipe away the tears and will swallow up death in final victory.''

It helps us in our own poverty of comprehension if we know that life and death are not absolutes, but merely transition of the human soul. This we know in our faith and trust in God.

Prayer: Dear Heavenly Father, please help Ginger's mother and father, JoAnna and Hafford, and her brothers, in this time of great sorrow. Help them in this moment of overpowering grief.

O God, we give back to you those whom You gave us. You did not lose Ginger when You gave her to us, and we do not lose her by her return to You. Your dear Son has taught us that life is eternal and love cannot die. So death is only an horizon, and an horizon is only the limit of our sight. Open our eyes to see more clearly, and draw us closer to You that we may know that we are nearer to our loved ones, who are with You. You have told us that You are preparing a place for us. Prepare us also for that happy place, that where You are we may be always.

O Lord, You have made us very small, and we bring our years to an end like a tale that is told. Help us to remember that beyond our brief day is the eternity of Your Love. Amen.

God bless Ginger and her family.●

MEASURE PLACED ON THE CALENDAR—H.R. 483

Mr. KYL. Mr. President, I understand that there is a bill at the desk that is due its second reading.

The PRESIDING OFFICER. The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 483) to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes.

Mr. KYL. I object to further proceedings on the bill at this time, Mr. President.

The PRESIDING OFFICER. The bill will be placed on the calendar pursuant to Rule XIV.

TRUTH IN LENDING CLASS ACTION RELIEF ACT OF 1995

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1380, that the bill be deemed read a second and third time, passed, and the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

Mr. MACK. Mr. President, I urge my colleagues to support H.R. 1380, which temporarily suspends class action lawsuits filed under the Truth in Lending Act until October 1, 1995.

This bill will give Congress time to address a U.S. Court of Appeals decision, Rodash versus AIB Mortgage Co., which allowed a borrower to rescind a mortgage based on a technical violation of the disclosure and notice requirements provided for in the Truth in Lending Act. Nearly 50 class action suits have been filed based on the Rodash decision.

The Truth in Lending Act is a complex law with almost no room for forgiveness if an honest technical error is made by the lender. Under truth in lending, for a mistake as little as $11 in how a charge is disclosed, the lender could be forced to reimburse all fees and costs to the borrower, including all interest paid for up to 3 years. In addition, the lender must release the mortgage lien, leaving the lender with an unsecured loan. These laws encourage cookie-cutter lending in order to avoid mistakes. Consumers are then hurt by higher rates and less lending.

The enormous number of loans that have been refinanced since 1991 makes this a potentially system-wide problem. I do not believe that the authors of the Truth in Lending Act intended to stifle creative lending and punish the mortgage industry for technical violations of its complex disclosure provisions. If the courts were to permit borrowers to rescind loans as part of class action lawsuits, the impact could be felt from the financial institutions and the secondary markets all the way to the Federal deposit insurance funds, which are ultimately backed by the U.S. taxpayer.

In Florida, we have seen ads with banner headlines, ''collect money back from your lender,'' encouraging borrowers to rescind their loan. There is no mention of harm done to the consumer in the ads. In fact, even if the amount disclosed was more than what was actually charged, a borrower can rescind the loan. I have heard that some attorneys are trying to amass a large number of plaintiffs in order to increase their fees. In the end, the biggest beneficiaries of this wave of class action suits will be the lawyers. Consumers will be left with small settlements, higher costs, and fewer choices of mortgage lenders.

This bill, H.R. 1380, gives Congress time to examine the Truth in Lending Act and correct the problems created by the Rodash decision. At a minimum, we need to clarify the disclosure provisions of this highly complex law, provide a greater tolerance for honest mistakes, and make sure that the penalties are in line with the violations.

This bill is narrowly drawn to temporarily end the abuse of the Truth in Lending Act through class-action suits. Individual consumers will still be allowed to bring suit during the moratorium on class actions. I urge my colleagues to support this bill.

Mr. D'AMATO. Mr. President, I rise today to voice my support for the Truth in Lending Class Action Relief Act of 1995. Our colleagues in the House recently passed this legislation. It is a product of bipartisan cooperation and is intended as a temporary measure to deal with an urgent situation. As chairman of the Banking Committee, I believe that immediate action is warranted. I would therefore encourage my colleagues to consider and pass H.R. 1380 immediately.

Mr. President, I made reference to an ''urgent situation.'' The situation to which I refer is the potential for devastating liability that threatens our housing finance system in the wake of the 11th Circuit Court of Appeals' recent decision in Rodash versus AIB Mortgage Co. The Rodash decision has resulted in a wave of litigation and created a threat of wholesale rescissions of mortgages. The threat of rescissions on so massive a scale could wreck havoc on our mortgage lending system and the secondary mortgage markets.

If a class-action rescission is granted, every class member would be released from their mortgage lien, and the obligation to pay finance charges and other charges. Class members would also be entitled to reimbursement of all finance charges, as well as other charges that are outside the scope of the finance charge. The 3-year right of rescission in truth in lending entitles the borrower to reimbursement of these charges. The potential for massive rescissions, based on technical disclosures errors of as little as $10, creates a potential for liability that has

been estimated to be as high as $217 billion.

The granting of wholesale rescissions, and the liability that such rescissions would create, could be devastating to both mortgage lenders, and to the secondary markets that provide the mortgage-market with liquidity. And we must remember that the liquidity of the mortgage markets has helped millions of Americans obtain their dream of home ownership at lower costs.

This bill will permit time for careful consideration of this problem. This legislation provides a short-term moratorium that only applies to class action certifications in connection with certain first-lien refinancings and consolidations. This moratorium is narrowly focused on a specific, technical disclosure problems, and will last only until October 1, 1995. This provision is not intended to impede the settlement of class actions. If, for purposes of settlement, the parties stipulate to the certification of a class, a court can approve the stipulation and solely for the purposes of settlement, can certify the class. A class action cannot be settled without certification of the class. This moratorium will provide time to remedy this problem and ensure the continued safety-and-soundness of the mortgage-finance markets.

Mr. BOND. Mr. President, I state my support for H.R. 1380, the Truth in Lending Class Action Relief Act of 1995. This important legislation is designed to impose a class action moratorium on certain lawsuits under the Truth in Lending Act. This legislation is narrow but necessary to give the Congress an opportunity to review the requirements of the Truth in Lending Act and the possible unintended consequences of the Rodash case and the possible impact of Rodash on the mortgage finance industry.

Rodash is a Florida case that allowed for the rescission of a mortgage where the lender disclosed certain delivery fees and an intangible tax in an improper place on the settlement sheet. This case has now been used as precedent for nationwide lawsuits that could potentially disrupt and damage our mortgage finance industry. I emphasis that the violation in Rodash was a technical violation of the Truth in Lending Act, and that the fees in question were small and that any improper disclosure was unintended. Nevertheless, a complete rescission of the mortgage was permitted.

In addition, since 1991, some 11.8 million loans totaling $1.3 trillion have been refinanced. The cost of rescinding these mortgages is about $217 billion. To apply Rodash to the mortgage industry is like killing a mosquito with an atomic bomb. I believe we need to consider these consequences.

Thank you, Mr. President.

The bill (H.R. 1380) was deemed read three times and passed.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 104–3 AND TREATY DOCUMENT NO. 104–4

Mr. KYL. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following two treaties transmitted to the Senate on April 24, 1995, by the President of the United States: Extradition Treaty with Jordan (Treaty Document No. 104–3); and Protocol Amending the 1980 Tax Convention with Canada (Treaty Document No. 104–4).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan, signed at Washington on March 28, 1995. Also transmitted for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Treaty establishes the conditions and procedures for extradition between the United States and Jordan. It also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The Treaty further represents an important step in combatting terrorism by excluding from the scope of the political offense exception serious offenses typically committed by terrorists, e.g., crimes against a Head of State or first family member of either Party, aircraft hijacking, aircraft sabotage, crimes against internationally protected persons, including diplomats, hostage-taking, narcotics trafficking, and other offenses for which the United States and Jordan have an obligation to extradite or submit to prosecution by reason of a multilateral international agreement or treaty.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *April 24, 1995.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification, a revised Protocol Amending the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital Signed at Washington on September 26, 1980, as Amended by the Protocols Signed on June 14, 1983, and March 28, 1984. This revised Protocol was signed at Washington on March 17, 1995. Also transmitted for the information of the Senate is the report of the Department of State with respect to the revised Protocol. The principal provisions of the Protocol, as well as the reasons for the technical amendments made in the revised Protocol, are explained in that document.

It is my desire that the revised Protocol transmitted herewith be considered in place of the Protocol to the Income Tax Convention with Canada signed at Washington on August 31, 1994, which was transmitted to the Senate with my message dated September 14, 1994, and which is now pending in the Committee on Foreign Relations. I desire, therefore, to withdraw from the Senate the Protocol signed in August 1994.

I recommend that the Senate give early and favorable consideration to the revised Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *April 24, 1995.*

ORDERS FOR TUESDAY, APRIL 25, 1995

Mr. KYL. Finally, Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 a.m., on Tuesday, April 25, 1995; that following the prayer the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, there then be a period for the transaction of routine morning business not to extend beyond the hour of 12 noon with Senators permitted to speak for up to 5 minutes each with the exception of the following: Senator DOMENICI, 60 minutes; Senator THOMAS, 30 minutes; Senator BAUCUS, 15 minutes.

I further ask that at 12 noon, Tuesday, the Senate proceed to a vote on the adoption of Senate Resolution 110, regarding the bombing in Oklahoma City; further that the Senate recess between the hours of 12:30 and 2:15 tomorrow for the weekly policy luncheons to meet.

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

PROGRAM

Mr. KYL. Mr. President, for the information of my colleagues, the leader has advised that there will be a rollcall vote on the Oklahoma City resolution at 12 noon tomorrow. Following the conclusion of the policy luncheons at

2:15 the Senate will return to the consideration of the product liability bill, H.R. 956.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 6:40 p.m., recessed until Tuesday, April 25, 1995, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 24, 1995:

DEPARTMENT OF STATE

A. PETER BURLEIGH, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MALDIVES.

DAVID C. LITT, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED ARAB EMIRATES.

LARRY C. NAPPER, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO LATVIA.

R. GRANT SMITH, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TAJIKISTAN.

DONALD K. STEINBERG, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ANGOLA.

LAWRENCE PALMER TAYLOR, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ESTONIA.

PATRICK NICKOLAS THEROS, OF DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE STATE OF QATAR.

PETER TOMSEN, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ARMENIA.

JENONNE R. WALKER, OF DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CZECH REPUBLIC.

JAMES ALAN WILLIAMS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS THE SPECIAL COORDINATOR FOR CYPRUS.

FEDERAL INSURANCE TRUST FUNDS

STEPHEN G. KELLISON, OF TEXAS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND FOR A TERM OF 4 YEARS, VICE DAVID M. WALKER, TERM EXPIRED.

MARILYN MOON, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND FOR A TERM OF 4 YEARS, VICE STANFORD G. ROSS.

EXECUTIVE OFFICE OF THE PRESIDENT

IRA S. SHAPIRO, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SENIOR COUNSEL AND NEGOTIATOR IN THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. GORDON R. SULLIVAN, 000–00–0000

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. MARVIN L. COVAULT, 000–00–0000

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. ROBERT E. GRAY, 000–00–0000

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN. JOHN E. MILLER, 000–00–0000

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. WILLIAM G. CARTER III, 000–00–0000

THE FOLLOWING UNITED STATES ARMY NATIONAL GUARD OFFICER FOR PROMOTION TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF SECTIONS 3385, 3392, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. SAM C. TURK, 000–00–0000

THE FOLLOWING UNITED STATES 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. JAMES J. HUGHES, JR., 000–00–0000
BRIG. GEN. WILLIAM D. JONES, 000–00–0000
BRIG. GEN. MELVIN C. THRASH, 000–00–0000

To be brigadier general

COL. JOHN W. HUBBARD, 000–00–0000
COL. JOHN D. HAVENS, 000–00–0000
COL. RONALD D. TINCHER, 000–00–0000
COL. PETER B. INJASOULIAN, 000–00–0000
COL. ALFRED E. TOBIN, 000–00–0000
COL. JAMES W. O'TOOLE, 000–00–0000
COL. FRANCIS D. VAVALA, 000–00–0000
COL. MICHAEL H. HARRIS, 000–00–0000
COL. ALBERT A. MANGONE, 000–00–0000
COL. DAVID P. RATACZAK, 000–00–0000
COL. THOMAS D. KINLEY, 000–00–0000
COL. JOSEPH J. TALUTO, 000–00–0000
COL. NORMAN A. HOFFMAN, 000–00–0000
COL. EWALD E. BETH, 000–00–0000
COL. GENE SISNEROS, 000–00–0000
COL. GUS L. HARGETT, JR., 000–00–0000
COL. HAROLD J. STEARNS, 000–00–0000

IN THE AIR FORCE

THE FOLLOWING INDIVIDUAL FOR RESERVE OF THE AIR FORCE APPOINTMENT, IN THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 12203 WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8067 TO PERFORM THE DUTIES INDICATED.

MEDICAL CORPS

To be colonel

JAMES C. INGRAM, JR., 000–00–0000

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE UNITED STATES AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

CHAPLAIN CORPS

To be colonel

DANNY N. ARMSTRONG, 000–00–0000
JOHN R. BLAIR, 000–00–0000
EDWARD T. BROGAN, 000–00–0000
JOHN M. COLLINS, 000–00–0000
WALTER M. COURTER II, 000–00–0000
SHARON M. FREETO, 000–00–0000
HENRY B. HIGHFILL, 000–00–0000
RICHARD A. JOHNSON, 000–00–0000
RONALD H. KELLING, 000–00–0000
JOSEPH F. MC CAHON, JR., 000–00–0000
JAMES P. REVELLO, 000–00–0000
EVERETT C. SCHRUM, 000–00–0000
JAMES R. WILSON, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C. SECTIONS 12203 AND 3385:

ARMY PROMOTION LIST

To be colonel

JAMES W. CLEVENGER, JR., 000–00–0000
WILLIAM R. FURR, 000–00–0000
STEPHEN C. HOFFMAN, 000–00–0000
VERN P. HOUGH, 000–00–0000
WILLIAM G. LAFLEUR, 000–00–0000
JAY W. LYTLE, 000–00–0000
RICHARD R. MICHAELS, 000–00–0000
DIRCK G. TERWILLIGER, 000–00–0000
ROBERT J. WEITZEL, JR., 000–00–0000

ARMY PROMOTION LIST

To be lieutenant colonel

WALTER R. CYRUS, 000–00–0000
PAUL F. HULSLANDER, 000–00–0000
KEVIN R. MC BRIDE, 000–00–0000
JOHN W. PAULSEN, 000–00–0000
AMBERT P. PETRONI III, 000–00–0000
JOHNNY L. RUSSELL, 000–00–0000
ANTHONY M. STANICH, JR., 000–00–0000
MICHAEL C. STERLING, 000–00–0000
MICHAEL K. SWEENEY, 000–00–0000
LINDELL M. WEEKS II, 000–00–0000

DENTAL CORPS

To be lieutenant colonel

CHARLES M. KING, 000–00–0000

IN THE NAVY

THE FOLLOWING-NAMED OFFICERS IN THE LINE OF THE NAVY FOR PERMANENT PROMOTION, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

To be captain

CHRISTOPHER J. REMSHAK, 000–00–0000
THOMAS G. SOBIECK, 000–00–0000

UNRESTRICTED LINE OFFICER

To be lieutenant commander

MIKE A. BRYAN, 000–00–0000
MICHAEL S. CUSHANICK, 000–00–0000
ROBERT W. ERNST, 000–00–0000
BRYAN J. LOWER, 000–00–0000

IN THE MARINE CORPS

THE FOLLOWING-NAMED MAJORS OF THE U.S. MARINE CORPS FOR PROMOTION TO THE GRADE OF LIEUTENANT COLONEL, UNDER THE PROVISIONS OF SECTION 624 OF TITLE 10, UNITED STATES CODE:

To be lieutenant colonel

ACKER, WILLIAM E., 000–00–0000
ALBO, MICHAEL C., 000–00–0000
ALDRICH, JAMES V., 000–00–0000
ALLEN, BERNAL B., 000–00–0000
ALLEN, GEORGE J., 000–00–0000
ARBOGAST, STEVEN M., 000–00–0000
BAILEY, THOMAS B., III, 000–00–0000
BAKER, ROBERT G., 000–00–0000
BALLENTINE, RICHARD J., JR., 000–00–0000
BARBER, DAVID R., 000–00–0000
BARILE, DAVID J., 000–00–0000
BARND, DANIEL J., 000–00–0000
BARTON, LORNA M., 000–00–0000
BATY, ROGER L., 000–00–0000
BECK, PHILLIP W., 000–00–0000
BEDWORTH, DAVID, 000–00–0000
BELL, RUSSELL H., 000–00–0000
BENNETT, DREW A., 000–00–0000
BENSON, TIMOTHY P., 000–00–0000
BERGMAN, INGRID E., 000–00–0000
BICK, DAVID W., 000–00–0000
BIXLER, DAVID B., 000–00–0000
BIZZELL, BARRY B., 000–00–0000
BLANCO, RICARDO J., 000–00–0000
BLUM, JOHN A., 000–00–0000
BOCH, RICHARD K., 000–00–0000
BOLIN, MARK G., 000–00–0000
BOLITHO, KIM D., 000–00–0000
BOYD, DENNIS G., 000–00–0000
BRADY, ROBERT M., 000–00–0000
BREAULT, CHRISTIAN G., 000–00–0000
BRITTON, RICHARD W., 000–00–0000
BROWN, WILLIAM N., JR., 000–00–0000
BRUSH, DANNY L., 000–00–0000
BUCHER, STEPHEN A., 000–00–0000
BUMGARDNER, SHERROD L., JR., 000–00–0000
CALLAHAN, WILLIAM H., JR., 000–00–0000
CALLEROS, SALVADOR J., 000–00–0000
CALLIHAN, WILLIAM M., 000–00–0000
CARTER, TANDY P., 000–00–0000
CATLIN, BRIAN D., 000–00–0000
CHANDLER, JOHN W., 000–00–0000
CHRISTBURG, CHARLES A., JR., 000–00–0000
CHRISTIE, RICHARD A., 000–00–0000
CLUBINE, DOUGLAS L., 000–00–0000
COBURN, ROBERT A., 000–00–0000
COMBS, MICHAEL L., 000–00–0000
COMER, DOSIE O., 000–00–0000
CORBETT, ARTHUR J., 000–00–0000
CORBETT, THOMAS M., 000–00–0000
CORBIN, PAUL T., 000–00–0000
CORCORAN, MICHAEL A., 000–00–0000
CROISETIERE, PAUL, 000–00–0000
CRONIN, ROBERT B., 000–00–0000
CRONIN, ROBERT F., 000–00–0000
CRONIN, WILLIAM R., 000–00–0000

CURRY, JAMES V., 000–00–0000
CUSHING, DANIEL E., 000–00–0000
CVRK, CHARLES C., 000–00–0000
DALLAS, GEORGE M., 000–00–0000
DAMBRA, CRAIG W., 000–00–0000
DANCHAK, RICHARD, 000–00–0000
DANIELS, EUGENE T., JR., 000–00–0000
DAVIS, CLETIS R., 000–00–0000
DEITZ, DANIEL D., 000–00–0000
DESTAFNEY, ROBERT W., 000–00–0000
DEWEESE, JEFFREY L., 000–00–0000
DEWEY, HENRY C., III, 000–00–0000
DIPMAN, DAVID A., 000–00–0000
DODD, STEPHEN P., 000–00–0000
DODSON, RONALD G., JR., 000–00–0000
DONIGAN, HENRY J., III, 000–00–0000
DOUMA, STEPHEN M., 000–00–0000
DRUMMOND, ROBERT J., 000–00–0000
DUDA, JOHN S., 000–00–0000
DUNLAP, RICHARD C., 000–00–0000
ECKHOFF, GEORGE H., 000–00–0000
EDWARDSON, DALE R., 000–00–0000
EISENMANN, GARY A., 000–00–0000
FAVORS, ROSE M., 000–00–0000
FAZIO, ANTHONY P., 000–00–0000
FEBUARY, WILLIAM S., 000–00–0000
FELL, WILLIAM G., JR., 000–00–0000
FIELDER, EDWIN E., 000–00–0000
FINDLAY, RICHARD J., 000–00–0000
FIROVED, KENNETH N., 000–00–0000
FISHER, MARC W., 000–00–0000
FLEMING, RICHARD A., III, 000–00–0000
FLORYSHAK, DANIEL M., 000–00–0000
FLOYD, MOSE L., 000–00–0000
FOLEY, SYLVESTER R., III, 000–00–0000
FONDAW, JEFFREY E., 000–00–0000
FORAND, STEPHEN L., 000–00–0000
FOREMAN, STEPHEN H., 000–00–0000
FORT, MARK E., 000–00–0000
FRACASSA, MARK, 000–00–0000
FRANCIS, DAVID C., 000–00–0000
FUSCA, VINCENT J., III, 000–00–0000
GAILLARD, JOHN D., 000–00–0000
GANDY, BRUCE A., 000–00–0000
GARDINER, KENNETH P., 000–00–0000
GARRETT, GEORGE P., 000–00–0000
GEIGER, BRADLEY K., 000–00–0000
GEORGE, MICHAEL A., 000–00–0000
GERENCSER, LADISLAUS P., 000–00–0000
GLEASON, PHILLIP B., 000–00–0000
GORDON, MICHAEL S., 000–00–0000
GRAHAM, ROBERT B., 000–00–0000
GREGORY, MICHAEL L., 000–00–0000
GREGORY, THOMAS E., 000–00–0000
GRISIER, DARCY E., II, 000–00–0000
GROTZKY, CRAIG L., 000–00–0000
GUILMAIN, RODNEY A., 000–00–0000
HABBESTAD, GORDON B., 000–00–0000
HABEL, JOHN X., 000–00–0000
HAIG, JAMES A., 000–00–0000
HAMLIN, WILLIAM A., 000–00–0000
HAMM, WALTER B., 000–00–0000
HANIFEN, TIMOTHY C., 000–00–0000
HANKS, THOMAS L., 000–00–0000
HARBISON, JAMES E., 000–00–0000
HARDEMAN, ANDRE J., 000–00–0000
HARDY, WILLIAM E., 000–00–0000
HASLAM, ANTHONY M., 000–00–0000
HATCHER, EDWARD M., JR., 000–00–0000
HEINZ, DAVID R., 000–00–0000
HENDRICKSON, ALAN G., 000–00–0000
HIBBERT, RICHARD E., 000–00–0000
HILL, RANDOLPH L., 000–00–0000
HOEY, KEVIN A., 000–00–0000
HOLDORF, WILLIAM E., 000–00–0000
HOLM, RANDALL W., 000–00–0000
HOPPER, HERBERT A., III, 000–00–0000
HOSTETTER, MARY L., 000–00–0000
HOWARD, TIMOTHY B., 000–00–0000
HUDSON, FRED S., JR., 000–00–0000
INHOFF, KENNETH G., 000–00–0000
ISLEIB, DOUGLAS R., 000–00–0000
JOHNSON, MICHAEL K., 000–00–0000
KARCHER, DAVID P., JR., 000–00–0000
KARLS, DANIEL L., 000–00–0000
KATZ, ELLIOT S., 000–00–0000
KEADLE, JAMES S., 000–00–0000
KEARNS, DARIEN L., 000–00–0000
KELLEY, KEVIN L., 000–00–0000
KIDD, DANIEL W., 000–00–0000
KINNERUP, JAMES J., III, 000–00–0000
KLEPAC, ERIC L., 000–00–0000
KNOTTS, KENNETH J., JR., 000–00–0000
KOLB, TIMOTHY J., 000–00–0000
KOONTZ, THOMAS F., 000–00–0000
KRATZER, DALE L., JR., 000–00–0000
KURTZHALTS, MARK W., 000–00–0000
KVIGNE, KELLY W., 000–00–0000
LAMONT, ROBERT W., 000–00–0000
LANE, LAWRENCE B., 000–00–0000
LAWSON, WALTER S., 000–00–0000
LEBRESCU, RHONDA G., 000–00–0000
LEE, JAMES M., JR., 000–00–0000
LINDBOE, DONALD T., 000–00–0000
LOBB, MICHAEL J., 000–00–0000
LOCKARD, TERRY M., 000–00–0000
LOCKETT, KEITH V., 000–00–0000
LONGCOY, LAWRENCE W., 000–00–0000
LOVE, ROBERT E., 000–00–0000
LUCENTA, WILLIAM, 000–00–0000
LYONS, GERARD J., 000–00–0000
MAHAFFEY, MARK D., 000–00–0000
MALCOLM, DAVID S., 000–00–0000
MAMZIC, CURTIS E., 000–00–0000
MARLETTO, MICHAEL P., 000–00–0000
MARSHALL, CRAIG A., 000–00–0000
MARTINEZ, ADOLFO, 000–00–0000
MATTOS, STEVEN H., 000–00–0000
MCBRIDE, LANCE R., 000–00–0000
MCFARLAND, RONNEL R., 000–00–0000
MCGOVERN, JEROME P., 000–00–0000
MCKEON, MARK F., 000–00–0000
MCKNIGHT, JOHN E., III, 000–00–0000
MCLAWHORN, DAVID W., 000–00–0000
MCLEAN, JOHN E., II, 000–00–0000
MCMANNUS, DANIEL L., 000–00–0000
MILES, WILLIAM J., 000–00–0000
MILLER, THOMAS D., 000–00–0000
MITCHELL, CHARLES F., 000–00–0000
MITCHELL, J.S., 000–00–0000
MOHR, MITCHELL A., 000–00–0000
MOORE, TIMOTHY E., 000–00–0000
MOSELEY, CHARLES T., 000–00–0000
MOTZ, DWIGHT R., 000–00–0000
MUEGGE, RICHARD A., 000–00–0000
MULCAHY, SEAN T., 000–00–0000
MURRAY, GEORGE W., JR., 000–00–0000
NEFF, ALAN J., 000–00–0000
NELSON, LAURENCE H., 000–00–0000
NORTHING, JAMES H., 000–00–0000
O'KEEFE, KEVIN P., 000–00–0000
OLIVER, MAHATHA M., JR., 000–00–0000
OLMSTEAD, STEPHEN G., JR., 000–00–0000
OTTO, STEPHEN W., 000–00–0000
OURSO, FREDERICK J., JR., 000–00–0000
PAGE, JOHN E., 000–00–0000
PASCO, JONATHAN T., 000–00–0000
PEECOOK, MARK S., 000–00–0000
PELLISH, RICHARD B., 000–00–0000
PETERS, DANIEL G., 000–00–0000
PETERSON, DAVID, D., 000–00–0000
PHILLIPS, ROY E., 000–00–0000
POMEROY, STEPHEN M., 000–00–0000
PONTANI, VINCENT, JR., 000–00–0000
PTAKOWSKI, JOHN C., 000–00–0000
QUINLAN, MICHAEL W., 000–00–0000
RAFTERY, RICHARD J., 000–00–0000
RALPH, MICHAEL P., 000–00–0000
RATHGEBER, DAVID G., 000–00–0000
RAY, JONATHAN S., 000–00–0000
REA, ROBERT S., 000–00–0000
REECE, RICK L., 000–00–0000
REED, JOHN M., 000–00–0000
REED, RICHARD M., 000–00–0000
REEDER, THOMAS A., 000–00–0000
REHRIG, THOMAS L., 000–00–0000
REIST, DAVID G. 000–00–0000
RICHMOND, MARCUS E., 000–00–0000
RILEY, VICTOR J., III, 000–00–0000
ROGERS, MELVIN, 000–00–0000
RUDZIS, JOHN D., 000–00–0000
SANDLIN, PAUL M., 000–00–0000
SASSER, JAMES L., 000–00–0000
SAVARESE, MARK R., 000–00–0000
SCHARFEN, JONATHAN R., 000–00–0000
SCHOOLFIELD, DONALD J., 000–00–0000
SCHULTZ, MARK G., 000–00–0000
SCHWARTZ, RAYMOND E., III, 000–00–0000
SEIFERT, DANIEL R., 000–00–0000
SHARP, WALTER G., 000–00–0000
SHAW, GARY P. 000–00–0000
SHELTON, DAVID L., 000–00–0000
SHOULTS, EUGENE E., JR., 000–00–0000
SHUSKO, JOSEPH C., 000–00–0000
SHUTT, DAVID H., 000–00–0000
SIDERS, RANDY S., 000–00–0000
SIMPSON, ROCKY D., 000–00–0000
SKINNER, GARY F., 000–00–0000
SMITH, COLBY B., 000–00–0000
SMITH, GARY W., 000–00–0000
SMITH, NICHOLAS J., 000–00–0000
SPEGELE, JOHN J., 000–00–0000
SPILLERS, KEVIN P., 000–00–0000
STEELE, MICHAEL L., 000–00–0000
STOLAR, GERARD M., 000–00–0000
STONE, SHIMON, 000–00–0000
STREET, ROBERT S., 000–00–0000
STRINGER, WILLIAM F., 000–00–0000
TAKEHARA, MARK R., 000–00–0000
TARBUTTON, WILLIAM R., 000–00–0000
TARPEY, DANIEL F., JR., 000–00–0000
TAYLOR, JAMES F., JR., 000–00–0000
TAYLOR, ROBERT W., 000–00–0000
TERRELL, JOHN A., 000–00–0000
THOMAS, THOMAS W., II., 000–00–0000
THOMPSON, STEVEN J., 000–00–0000
THORSON, TIMOTHY L., 000–00–0000
TIBBITS, KEITH A., 000–00–0000
TOMON, ROBERT F., 000–00–0000
TONNACLIFF, BRIAN L., 000–00–0000
TULLY, ROBERT S., 000–00–0000
VALORE, JOSEPH P., JR., 000–00–0000
VANDYKE, ANTHONY E., 000–00–0000
VANPEURSEM, DENISE R., 000–00–0000
VOHASKA, MICHAEL J., 000–00–0000
WALKER, JAKE, JR., 000–00–0000
WALSH, FRANK E., 000–00–0000
WARNER, JAMES S., 000–00–0000
WASHINGTON, CLIFTON E., 000–00–0000
WATSON, DAMON T., 000–00–0000
WEBER, ERIC C., 000–00–0000
WEDERBROOK, EARL S., 000–00–0000
WELDON, CHRISTOPHER M., 000–00–0000
WESTERN, THOMAS F., 000–00–0000
WHITE, CHARLES M., 000–00–0000
WIENERS, ROBERT B., 000–00–0000
WILLIAMS, DENICE T., 000–00–0000
WILLIAMS, DOUGLAS G., 000–00–0000
WILLIAMS, JOHN D., 000–00–0000
WILLIAMS, WILLIAM J., 000–00–0000
WILLS, PATRICK E., 000–00–0000
WILSON, DAVID C., 000–00–0000
WINGARD, JOSEPH R., 000–00–0000
WINSTON, DAVID P., 000–00–0000
WINTERS, FREDERICK., 000–00–0000
WISSLER, JOHN E., 000–00–0000
WITTLE, STEPHEN B., 000–00–0000
WOODARD, BRUCE R., 000–00–0000
WOODS, CARL J., 000–00–0000
WUNDER, DAVID M., 000–00–0000
YEARY, LON M., 000–00–0000
YODER, RICHARD W., 000–00–0000
YOUNT, PETER E., 000–00–0000
YOWELL, RONNY L., 000–00–0000

IN THE NAVY

THE FOLLOWING-NAMED COMMANDERS IN THE STAFF CORPS OF THE UNITED STATES NAVY FOR PROMOTION TO THE PERMANENT GRADE OF CAPTAIN, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS OFFICERS

To be captain

ADAMS, ROBERT J., 000–00–0000
AMBROSE, MICHAEL R., 000–00–0000
BAYER, JON D., 000–00–0000
BETTS, LAWRENCE S., 000–00–0000
BIGHAM, WILLIAM J., 000–00–0000
BOWDEN, HERBERT H., JR., 000–00–0000
BOZMAN, RAYMOND E., 000–00–0000
CALLAN, DANIEL J., 000–00–0000
COHEN, BARRY D., 000–00–0000
COLEMAN, CLAUDE L., 000–00–0000
COLLINS, CHARLES M., 000–00–0000
COOTS, LAWRENCE E., 000–00–0000
CORSE, WILLIAM R. 000–00–0000
DUNTEMANN, THOMAS J., 000–00–0000
EDWARDS, RUSSELL P., 000–00–0000
ELLIOTT, KENT C., 000–00–0000
FULTON, DWIGHT C., 000–00–0000
GILBERT, RICHARD M., 000–00–0000
GREEN, JIMMY W., 000–00–0000
GREEN, JOHNNY B., 000–00–0000
HANSON, ROGER W., 000–00–0000
HIMES, THOMAS R., 000–00–0000
HOYLE, KENNETH S., 000–00–0000
HUNTER, CHRISTINE S., 000–00–0000
KANG, DONGKYOO R., 000–00–0000
KISER, WILLIAM R., 000–00–0000
KNOWLAN, MICHAEL N., 000–00–0000
KUEHNE, RICHARD F., 000–00–0000
LAVIN, BRUCE S., 000–00–0000
LAWRENCE, DAVID P., 000–00–0000
LAWSON, JOHN M., 000–00–0000
LEHNER, WILLIAM E., 000–00–0000
LINENGER, JERRY M., 000–00–0000
LOUP, DAVONNE S., 000–00–0000
LOVELL, LAVERNE R., 000–00–0000
MACRI, CHARLES J., 000–00–0000
MARIANO, ELEANOR C., 000–00–0000
MAYS, LUTHER M., 000–00–0000
MCCLELLAND, SCOTT R., 000–00–0000
NORTH, ROBERT B., JR., 000–00–0000
NYQUIST, BRIAN O., 000–00–0000
O'LEARY, MICHAEL J., 000–00–0000
OLSON, PATRICK E., 000–00–0000
RUDOCK, ALBERT S., 000–00–0000
SCHINDLER, WILLIAM R., 000–00–0000
SCHULTZ, ROBERT G., 000–00–0000
SELBY, STEPHEN J., 000–00–0000
SHARPE, ROBERT W., 000–00–0000
SOLLOCK, RONALD L., 000–00–0000
STANLEY, MARK D., 000–00–0000
STEVENS, MARK K., 000–00–0000
TORREY, STEPHEN A., JR., 000–00–0000
TUELLER, JOHN E., 000–00–0000
WALLACE, RICHARD B., 000–00–0000
WESSON, STANTON K., 000–00–0000
YERKES, SANDRA A., 000–00–0000
ZUKOWSKI, CHRISTOPHER W., 000–00–0000

SUPPLY CORPS OFFICERS

To be captain

APPLE, CHRIS L., 000–00–0000
BALES, RANDLE D., 000–00–0000
BARNES, WILLIAM A., 000–00–0000
BICKERT, WILLIAM E., JR., 000–00–0000
BILLIOURIS, JOEL L., 000–00–0000
BLAND, PAUL M., 000–00–0000
BODIN, KENNETH C., 000–00–0000
BOYD, RICHARD A., 000–00–0000
BROWN, GREGORY A., 000–00–0000
BROWN, WILLIE A., 000–00–0000
CALDWELL, GIGETTE P., 000–00–0000
COUCH, HOWARD W., JR., 000–00–0000
COWLEY, ROBERT E., III, 000–00–0000
CULVYHOUSE, FRED S., 000–00–0000
DEALY, DAVID M., 000–00–0000
DRERUP, JOHN W., JR., 000–00–0000
ELLIOTT, PATRICK A., 000–00–0000
FARGO, KEITH B., 000–00–0000
FREIHOFER, JAMES T., 000–00–0000
GRAHAM, JOHN M., 000–00–0000
GRAY, RICHARD D., 000–00–0000
HUFF, KURT R., 000–00–0000
HUNTRESS, DIANA E., 000–00–0000
KNAGGS, CHRISTOPHER D., 000–00–0000
MAGUIRE, WILLIAM J., 000–00–0000
MATHIEU, RONALD C., 000–00–0000
MORRIS, STEPHEN H., 000–00–0000
NANNEY, ROBERT G., 000–00–0000
RAUSCH, DAVID L., 000–00–0000
SLIGH, ALBERT B., JR., 000–00–0000
SMITH, DONALD F., JR., 000–00–0000
SUTTON, BOBBY L., JR., 000–00–0000
TISON, DONALD C., 000–00–0000
VADALA, LAWRENCE E., 000–00–0000

VARGO, JEANNE K., 000–00–0000

CHAPLAIN CORPS OFFICERS

To be captain

BUCHMILLER, RONALD J., 000–00–0000
ERB, RICHARD D., 000–00–0000
GIBSON, ARLO R., JR., 000–00–0000
GOMULKA, EUGENE T., 000–00–0000
HARWOOD, JAMES G., 000–00–0000
LAWSON, DOUGLAS W., 000–00–0000
MC NABB, JERRY E., 000–00–0000
MORRIS, DONALD A. S., 000–00–0000
OHICKEY, EILEEN L., 000–00–0000
OLAUSON, DOUGLAS J., 000–00–0000
POPE, JOHN W., 000–00–0000
SHIELDS, JERRY K., 000–00–0000
VIEIRA, JANE F., 000–00–0000

CIVIL ENGINEER CORPS OFFICERS

To be captain

AYARS, ARTHUR D., JR., 000–00–0000
DUBA, STEPHEN C., 000–00–0000
FOWLER, BRAD J., 000–00–0000
JOHNSON, STEVEN W., 000–00–0000
KATZWINKEL, ERNEST J., 000–00–0000
LIEDKE, THOMAS R., JR., 000–00–0000
LOFASO, JOSEPH M., 000–00–0000
LOOSE, MICHAEL K., 000–00–0000
MC AFEE, RICHARD J., 000–00–0000
MC CONNELL, JAMES A. J., 000–00–0000
MEHULA, JOSEPH A., II, 000–00–0000
OSTAG, WILLIAM P., 000–00–0000
PHILLIPS, ROBERT L., 000–00–0000
PRUETT, DAVID D., 000–00–0000
WYMAN, JON C., 000–00–0000
ZORICA, JOSEPH W., 000–00–0000

JUDGE ADVOCATE GENERAL'S CORPS OFFICERS

To be captain

ALLEN, CHARLES A., 000–00–0000
ALMAND, LAWSON R., 000–00–0000
DUFFY, JAMES F., 000–00–0000
LOHR, MICHAEL F., 000–00–0000
LORD, MICHAEL W., 000–00–0000
MC CULLOUGH, LARRY A., 000–00–0000
QUINN, JOHN P., 000–00–0000
SERAFINI, JAN R., 000–00–0000
TAYLOR, THOMAS R., 000–00–0000
UTECHT, MARK S., 000–00–0000
WILLIAMS, RICHARD G., 000–00–0000
YOUNG, TIMOTHY C., 000–00–0000

DENTAL CORPS OFFICERS

To be captain

AMRHEIN, EDWARD S., 000–00–0000
ARENDT, DOUGLAS M., 000–00–0000
DUGGER, JOE M., 000–00–0000
FAIRCHILD, CHARLES J., JR., 000–00–0000
HAGUE, RICHARD J., 000–00–0000
LEWIS, ERIC, 000–00–0000
MAYNARD, ROBERT D., 000–00–0000
MIEDEMA, MARK W., 000–00–0000
MILLER, WILLIAM W., 000–00–0000
ROYER, JAMES E., 000–00–0000
RUMANES, KIMON A., 000–00–0000
STURDY, KEVIN A., 000–00–0000
WALLACE, STEVE W., 000–00–0000

MEDICAL SERVICE CORPS OFFICERS

To be captain

ALEXANDER, MARTHA B., 000–00–0000
ARMSTRONG, CURTIS G., JR., 000–00–0000
AYERS, JAMES L., 000–00–0000
BALLY, RALPH E., 000–00–0000
BRANNMAN, BRIAN G., 000–00–0000
CURLEY, MICHAEL D., 000–00–0000
DUDLEY, CHARLES T., 000–00–0000
GALLIS, JOHN N., 000–00–0000
GIBSON, JOHN S., 000–00–0000
JOHANSON, DAVID C., 000–00–0000
KRASICKY, MARCIA W., 000–00–0000
LA FONTAINE, RICHARD L., 000–00–0000
LEYSATH, JOHN R., JR., 000–00–0000
LILIENTHAL MICHAEL G., 000–00–0000
LONG, ALBERT B., III, 000–00–0000
LUNDY, JOHN A., 000–00–0000
PETHO, FRANK C., 000–00–0000
RICE, STEPHEN C., 000–00–0000
SHORE, JOHN E., 000–00–0000
SIMPKINS, HARVEY L., 000–00–0000
SPOLNICKI, HENRY G., 000–00–0000
STILL, KENNETH R., 000–00–0000
STODDARD, SHELDON T., 000–00–0000
TRACY, JOHN E., 000–00–0000
WYNKOOP, DAVID A., 000–00–0000

NURSE CORPS OFFICERS

To be captain

BAILEY, KATHLEEN J., 000–00–0000
BENTON, ALANA M., 000–00–0000
BULL, PARTICIA M., 000–00–0000
CORRENTI, PATRICK S., 000–00–0000
FLOOD, SUE A., 000–00–0000
HIATT, KATHLEEN A., 000–00–0000
KELLOGG, JANICE S., 000–00–0000
KOSSLER, SANDRA L., 000–00–0000
LAUERMANN, PATRICIA G., 000–00–0000
MC CONNAUGHEY, RANDALL A., 000–00–0000
MOUNT, CHARLES B., 000–00–0000
MURPHY, PATRICIA C., 000–00–0000
RHODEY, DONNA K., 000–00–0000
TURPIN, LORI A., 000–00–0000
WAECKER, GEORGENE B., 000–00–0000