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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

WEDNESDAY, APRIL 26, 1995

(Legislative day of Monday, April 24, 1995)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer this morning will be delivered by the Reverend Dr. T. Warren Moorhead, of the First Baptist Church of Trion, GA.

PRAYER

The guest Chaplain, the Reverend Dr. T. Warren Moorhead, offered the following prayer:

May we pray:

Holy God, You are almighty, You alone are holy. As Lord of the universe, Sovereign Ruler of nations and men, and Holy Redeemer of the unborn, the living, and the dead, we join this Senate today confessing our unworthiness in Your presence. You are total love. Through the example of Your son, You taught us to love one another and to reach out to our neighbor, as well as our enemy. But too often we have been consumed by our own selfish concerns. Why must it take, O God, a tragedy as occurred last week to shock our Nation into realizing the potential evil inherent in every man's heart and our ultimate hopelessness without the manifestation of Your love in each of us through Your son, Jesus Christ.

You are God and we are but persons of clay. We begin this congressional day by acknowledging Your power and requesting Your guidance in all deliberations. Holy Father, give the Members of this body not only the wisdom to know right but also the courage to do what is right. The Members of this Chamber are accountable to the people of these United States but ultimately to You. Psalms 72 reminds us that You, God, give rulers Your justice that they may judge Your people with righteousness, Your poor with compassion, that they may defend the cause of the destitute, give deliverance to the needy, and crush the oppressor. Lord, may You give to the esteemed men and women of this sacred Chamber the willingness to cooperate with You in promoting justice and righteousness, establishing peace and tranquility across our troubled land. May we strive for the day when peace covers the Earth as water covers the sea.

Holy God, today, great pressures will be brought to bear on the men and women of this room. Remind them now that You allowed the people to elect them because of their inner strengths that will protect them from outside pressures. May the words of their mouths, the meditations of their hearts, and the actions of their hands be acceptable in Your sight this day. In Jesus' name I ask this. Amen.

The PRESIDENT pro tempore. The distinguished Senator from Georgia is recognized.

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

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

The bill clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

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

The bill clerk read as follows:

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

Pending:

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

(2) Abraham amendment No. 597 (to amendment No. 596) to provide for equity in legal fees.

(3) Hollings amendment No. 598 (to amendment No. 597) to establish a limitation on attorneys' fees in all civil actions to $50 per hour.

(4) Gorton (for Brown) amendment No. 599 (to amendment No. 596) to restore to rule 11 of the Federal Rules of Civil Procedure the restrictions on frivolous legal actions that existed prior to 1994.

The Senate resumed consideration of the bill.

Mr. GORTON. Mr. President, is there a pending amendment?

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

The PRESIDING OFFICER. The pending amendment is amendment No. 599 offered by the Senator from Washington on behalf of the Senator from Colorado.

Mr. GORTON. Mr. President, we are engaged in the debate over the public liability bill. The pending business is an amendment basically sponsored by the Senator from Colorado [Mr. BROWN], having to do with rule 11 of the Federal Rules of Civil Procedure.

There will be no votes until at least 6 o'clock this evening, at which time there will be votes both on an amendment by the Senator from Michigan [Mr. ABRAHAM], and a second-degree amendment to that amendment sponsored by the Senator from South Carolina [Mr. HOLLINGS].

As a consequence, there are essentially three amendments to the basic product liability bill before the Senate at this point. It is appropriate to debate each one of them.

In addition, I wish all Senators and their staffs who are listening to this debate to understand that while many Members of the Senate are in Mississippi for the funeral of our former colleague, Senator Stennis, it is appropriate at any time during the day to come and speak to any potential future amendment to this bill. We know that it is controversial. We know that there will be amendments to narrow the bill. We know that there will be amendments to broaden the bill. Anything that Members can do to discuss some of their proposals or their general attitudes on the bill itself during the course of the day will be appreciated.

How long this evening the majority leader will wish to keep us in session I do not know. But I do know that we will vote on the Hollings second-degree amendment and the Abraham first-degree amendment at approximately 6 o'clock. I know that the majority leader hopes thereafter to deal with the Brown amendment by vote today.

After that, under the order, the majority leader himself will present an amendment broadening the scope of the bill as it respects punitive damages. That will be a major amendment to the bill, and it is perfectly appropriate for people to express their views on that subject at any time during the day, even before the amendment itself is adopted.

Simply to summarize, this is the first time that the Senate has actually dealt with amendments, engaged in a formal debate on the subject of product liability or, more broadly, tort reform. In spite of the fact that there have been product liability bills introduced and sometimes reported by the Commerce Committee, at least since 1982, and perhaps earlier than that, the bill, in my view and that of my colleague, the Senator from West Virginia [Mr. ROCKEFELLER], is a balanced approach, balancing the interest of judgment and the prosecution of claims and product liability cases against the undoubted negative impact of product liability litigation on the creation of jobs, on American competitiveness, on the research and development of new products, of the marketing of valid products.

The impact of product liability litigation on the marketplace has been distinctly negative. It has dramatically reduced the number of producers of many important medicines, of commodities like football helmets, for example—almost anything that is ever associated with dangerous kinds of activities. We hope not to restrict the access to the courts on the part of people who are injured by the genuine negligence of manufacturers but to see to it that there is a balance in that litigation, a balance which more greatly encourages economic development in this country and encourages fairness by not subjecting manufacturers or wholesalers or retailers to litigation over matters which are not their fault or which subjects them to charges beyond their fault in the case of any such accident.

Mr. President, I spoke in general terms the day before yesterday, when this debate began, to the proposition that we now had precise information as to the impact of product liability legislation and did not have to deal with this question entirely in the abstract.

In spite of my statement just a few moments ago, there has, in fact, been action by this Congress on one very narrow, focused field of product liability in one very narrowly focused area.

For almost a decade, our colleague, the Senator from Kansas [Mrs. KASSEBAUM] has attempted to get relief for the manufacturers of small aircraft. Finally, last year, this Congress passed, with respect to small aircraft, one aspect of this product liability legislation: simply a statute of repose, an 18-year statute of repose, which frustrated lawsuits against the manufacturer with respect to aircraft more than 18 years in age.

The fact of so much product liability litigation against those aircraft manufacturers had reduced the production of private aircraft in the United States by companies like Piper and Cessna by some 95 percent over a period of about 20 or 30 years—95 percent, Mr. President.

For all practical purposes, that business was defunct in the United States of America, not only, of course, harming the companies, their employees, and their past employees, but limiting the availability of such aircraft to those who wished to purchase them and to fly them.

The mere passage into law 1 year ago of a statute of repose for that type of aircraft has already had a remarkably positive impact.

Quoting from testimony by the president of the General Aviation Manufacturers Association on this bill, the bill that is before us right now:

> After stopping the production of piston engine aircraft in 1986 because of spiraling liability costs, Cessna Aircraft recently announced construction of a new production facility for piston-powered airplanes in Independence, Kansas. Cessna plans to build 2,000 planes per year at the new facility and create over 1,500 new jobs. This will generate thousands of additional jobs among suppliers and vendors in Kansas and throughout the United States.
>
> Piper Aircraft, which was forced into bankruptcy in 1991 largely due to the costs of product liability suits and the threat of future litigation, is now planning to emerge from bankruptcy in the near future. Piper has increased both its employment and production schedules by thirty percent.

There is further testimony on Mooney Aircraft in Kerrville, TX.

But, Mr. President, if a modest statute of repose of that nature in one industry, albeit one graphically impacted by product liability litigation, can have such an immense recovery, benefiting, obviously, not only itself, its employees, and its suppliers, but obviously the people, the market out there for these aircraft, how much greater impact—100 times greater, or 1,000 times greater, we do not know—can general, fair, and balanced product liability legislation have in the United States of America, legislation that includes a statute of repose slightly longer, a statute of repose of 20 years, but one which also limits the arbitrary nature of punitive damage awards, one of the greatest fears of all manufacturers, but particularly small manufacturers, in the United States.

One such manufacturer who testified before the Commerce Committee shrugged his shoulders and said: ''A single such lawsuit could drive me out of business and destroy the work of an entire lifetime, whether I really had a major responsibility or not.'' Not only because of the unlimited nature of potential punitive damage awards but because of the doctrine of joint liability under which, when there is more than one defendant, one, the deep pocket, can have imposed on it the entire judgment, even though the responsibility of that defendant was, say, only on the order of some 10 percent.

So reforms in joint liability, reforms in punitive damages, reforms by reason of a statute of repose, the removal of responsibility from a wholesaler for judgments against the manufacturer, each of these is an important step forward, which not only does not undercut justice but advances the cause of justice. At the same time, reforms can have an impact, perhaps not as dramatic as these to which I have spoken in private business driven aircraft, but across our entire economy vitally important and positive.

This, Mr. President, is an important bill. The general subject of legal reform beyond this is important, as well. Just yesterday afternoon, the Senate Labor Committee reported a bill similar to this on the subject of medical malpractice, a vitally important element in any health care reform, in the view of this Senator.

So I hope that, certainly by sometime next week, we will be able to

bring this bill in its then form to some final vote. But, in order to do so, we need the cooperation of Members. We need them to appear. We need them to speak to their amendments or speak to the bill, to let their views be known, to carry on the debate in the better traditions of the Senate.

So, Mr. President, I summarize by saying we are open and ready for business and any Member who wishes to do business will be welcome through the door.

With that, 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. KOHL. 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. KOHL. Mr. President, I ask unanimous consent to speak as in morning business.

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

TRIBUTE TO SENATOR DAVID PRYOR

Mr. KOHL. Mr. President, I come to the floor today for just a few moments to express my admiration and appreciation and my respect for DAVID PRYOR, our colleague, who has announced that he will not be running for reelection next year.

For those of us in Washington and, of course, for those people in public life all over the country, we meet all manner of different human beings, both in terms of the constituents that we meet and, of course, the colleagues with whom we work. While none are bad, some are different from others and some are better and some are best. And in the category of best, I would put DAVID PRYOR, the best kind of a human being, the best kind of a friend, the best kind of a public representative.

The people in Arkansas know very well what an outstanding person DAVID PRYOR is and what a great public servant DAVID PRYOR has been. He is beloved by virtually everybody in Arkansas to the extent that when he ran for reelection last time, he had no opposition, and had he run for reelection in 1996, it is undoubtedly true that he would have received an enormous majority of the votes cast in that election.

So DAVID PRYOR's record of accomplishment and achievement, the esteem in which he is held by people in Arkansas, is well known. Those of us here who have worked with him in the Senate are equally well aware of what it is that DAVID PRYOR has accomplished and what kind of a person he is. In my judgment, DAVID PRYOR is the best kind of a public servant, the best kind of a Senator, for many reasons, chief among which, in my judgment, is the fact that he is a person who can and does work with all of his colleagues, regardless of which side of the aisle they happen to occupy. I believe that is an enormous virtue in a public servant, and that it is invaluable in the Senate where, in order to get things done in a constructive fashion, in order to keep the place working, people have to have a willingness and an ability to compromise their differences in order to get things passed, in order to keep legislation moving and, more importantly perhaps, in order to assure the people that we represent all over the country that this is an institution that can work.

DAVID PRYOR understands that as well as anybody I have met in my now 6 years here in the Senate. He practices that. Although we Democrats, of course, know how comfortable and how easy it is to work with him, I know it is equally true that Republicans recognize in DAVID PRYOR a person who, more than anything else, wants to get things done and in no way, ever, is interested in just impeding the work of the Senate.

So he is an outstanding person. Personally, DAVID PRYOR, when I came here 6 years ago, befriended me immediately. He went out of his way, recognizing that I was new to the process, and he went out of his way to see to it that I got along here and got to know my colleagues, got to know a little bit about how the Senate works, and in every way and at every turn, when I ran up against an obstacle or had a problem I did not know how to deal with, I felt comfortable talking to him. He was always receptive and always willing to put aside whatever it was he was occupied with in order to take care of my needs and to help ensure that I became a working Member of this body.

So DAVID PRYOR has been not only a great Senator but he has been a wonderful human being. I think that we can celebrate what he has accomplished in his career here in the Senate and celebrate it in a way which really does not, in any way, suggest that his career is over. He is not running for reelection in 1996. He says he wants to return to the private sector. Whatever he does, he is going to be good and effective at it. He is a person of public service, and his career in politics may go on at another time in another place and in another job. If it does, we will all be very well served.

So DAVID PRYOR, we love you and we respect you. We have great regard for what you have accomplished here among us, and we wish you well during these next 18 months when you will continue to serve with us. We certainly wish you, Barbara, and your family continued good health and happiness as you wend your way along the path of life.

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

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

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

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

SENATOR DAVID PRYOR

Mr. SIMON. Mr. President, I happened to turn my television set on in my room and caught Senator KOHL making his brief remarks about our colleague, Senator PRYOR. It occurred to me that I should come over here and just say a few things also, about DAVID PRYOR, who has announced that he is not going to be running for reelection.

I can remember when I was in the House and I heard DAVID PRYOR speak to a breakfast meeting. I had known him just to say hello, but I was very favorably impressed and I have been favorably impressed through the years.

Two things I think of specifically in connection with our colleague, Senator PRYOR. One is the Taxpayer Bill of Rights. The Internal Revenue Service does excellent work, but whenever you have human beings, occasionally there are those who abuse their privileges and that is true in any organization—the U.S. Senate, the Internal Revenue Service. So DAVID PRYOR introduced his Taxpayer Bill of Rights, which gives the ordinary taxpayer, who may be abused, or feels he or she is abused by the IRS, an option and an ombudsman who can say: Let us take a look at whether we are doing the right thing.

The second thing I can remember is DAVE PRYOR standing here on the floor and going through an amazing list of consultants being hired by virtually every agency of Government. It was an astounding accumulation. I do not remember what the figure was, but it was absolutely astounding. I remember then the next appropriations, and the next budget, we whacked away at that. It may very well be creeping back up again, I do not know, but it is one of those areas that is very easily abused by Government. We hire consultants for everything from the Department of Energy, Department of Defense, foreign aid—whatever it is, we hire consultants.

I also think of DAVE PRYOR as someone who is genuinely interested in the well-being of our country. Yes, he is a partisan as we all are partisans, but frequently this body gets too partisan. I hear it in our Democratic caucuses. I am sure my colleague hears it from Republican caucuses. He has not invited me to any of his Republican caucuses, but I am sure he hears the same. And I think one of the things the public wants from us is that we say, ''What is

good for the country?'' And we follow that. DAVE PRYOR really has done that.

He has been just a distinguished Member of this body in addition to being a friend of all of us. It has been a real privilege to serve with him in the U.S. Senate. He has served Arkansas well, but I think more important than that, he has served the United States of America well. I am proud to have him as a colleague here in the Senate.

Mr. GORTON. Will the Senator from Illinois yield?

Mr. SIMON. I will be pleased to yield to my friend from Washington.

Mr. GORTON. I enjoyed the description by the Senator from Illinois of the Senator from Arkansas. I agree with it. I may also say I believe the Senator from Illinois has described himself.

Mr. SIMON. My friend from Washington has been too generous in that remark, but I thank him anyway.

Mr. President, if no one else seeks the floor—I see my colleague from Colorado does not look as if he is quite ready. He is still making notes.

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. FRIST. 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 Tennessee.

Mr. FRIST. Mr. President, I ask unanimous consent that I be permitted to speak as if in morning business for a period of not more than 10 minutes.

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

MEDICARE: THE TICKING TIME BOMB

Mr. FRIST. Mr. President, I rise to discuss the approaching insolvency of our Medicare Program.

The Clinton administration has confirmed that Medicare is going bankrupt. We must act now to save it. We must reform Medicare to protect it, to preserve it, and to improve it.

Next year, for the first time in its 30-year history, the program will begin deficit spending. And on April 3, the Medicare Board of Trustees announced that Medicare will go bankrupt by the year 2002. In 7 years—well before I will be eligible for benefits—the program will have exhausted all of its resources and will cease to exist in its current form. We must act now.

This is not new information—Congress has been warned repeatedly of the Medicare time bomb. Mr. President, the clock is ticking—we must take action this Congress to save this vital program. I come before you today to discuss the successes and failures of this program, and to begin to look for ways to protect and preserve its long-term health.

What is Medicare? It is a Government program which gives 32 million older Americans and 4 million individuals with disabilities access to the private health care system. Medicare is actually made up to two entirely different programs: A hospital insurance program, which is compulsory for seniors, and a physician insurance program, which is voluntary, with 96 percent of all seniors participating in this voluntary insurance program.

Medicare's hospital insurance program—part A—is funded by a payroll tax on working citizens, a tax which entitles them to future benefits.

The physician insurance program, part B, in contrast, is funded by a combination of general tax revenues and premiums paid by the beneficiary.

Medicare has been very successful, successful in providing access to quality care. More than 37 million Americans today are covered by the program. Today's elderly live longer, live healthier lives, and enjoy a better quality of life than ever before. Medicare participants are extremely satisfied with the overall care they receive. Yet, Medicare has become a victim of its own success. All will be lost if we do not act to save Medicare.

Over the years, many have found fault with the program: it does not cover comprehensive benefits; it does not protect out-of-pocket costs; it does not really provide incentives for consumers to maintain cost-conscious behavior; it does not reward providers with keeping people healthy; and its costs clearly are growing out of control faster than the Nation's economy, faster than the budget as a whole, and faster than twice the rate of inflation. Medicare spending rose by 11 percent last year, while private sector health care spending rose by only 4 percent.

Thus, each of us comes to the Medicare Program with the hope of addressing one or more of these problems. As a citizen legislator, one who comes to the Senate directly from the private sector, I approach this challenge wearing many hats. I come to the table as a health care provider, a physician who on a daily basis has served the personal health care needs of thousands of Medicare patients. I come to the table as the son of two active parents, both of whom are 84 years of age. They have been beneficiaries of Medicare as they were treated for heart attacks, colon cancer, pulmonary edema, a fractured neck, bleeding ulcers, kidney failure, a broken arm, phlebitis, and a stroke. I come to the table as a father of three boys whose generation will be working to the pay the bills for my generation. And I come to the table as a legislator who sees the looming crisis of Medicare staring us straight in the face.

When Medicare was designed in 1965, the goal very clearly was to provide senior citizens with greater access to our country's health care system. Medicare at that time was structured to mirror the private system of the time which in 1965 was primarily Blue Cross and Blue Shield fee for service. That means Congress paid providers based solely on the cost of the care delivered. There was no fee schedule of negotiated rates with providers. There was no real justification of costs. Furthermore, at that time Medicare insulated providers from the Government by allowing them to work through fiscal intermediaries and carriers, similar to private insurance.

Now, Medicare is an insurance program that pays for private services. Great Britain took quite a different approach. I spent almost a year as a physician in England, and I as a physician worked directly for the English Government receiving a salary from the English Government as an employee of the National Health Service. The English have replaced their national insurance program and moved directly into Government provision of services. Whereas our country relies on the private sector for control and direction, England relies on direct Government intervention. This underlying philosophy is fundamental to our understanding of Medicare. Medicare was established to give seniors access to the very same health care system available to all other Americans.

But as the American medicine delivery systems have changed over the last 30 years, and matured and diversified, Medicare has remained stagnant. Medicare fails to give seniors access to the full range of plans currently available to all other Americans. The private system has evolved and Medicare has failed to keep up. Changes and improvements are required today before seniors and the disabled fall even further behind.

Managed care illustrates that point. Today, 63 percent of working Americans obtain their care through some type of managed care program. In contrast, only 9 percent of seniors are enrolled in some type of managed care. Yet, it is important for people to understand managed care is only one of the options in the private system today. There are many others. And reasoned Medicare reform would open the Medicare Program broadly to the many options that are available to all other Americans in our private system today. It would allow seniors the freedom to direct their Medicare money to the plan of their choice. For some, that would mean an employer-sponsored plan. For others, it would mean an indemnity-type plan, and for still others a looser form of managed care. But the bottom line is that the Government should no longer restrict a senior's choice of health plans.

New to this body, I find it hard to understand why Congress has failed to pay attention to the ticking time bomb—Medicare. By failing to address the issue head on, we only delay the inevitable and make it more difficult for our successors. If we choose not to preserve Medicare's integrity, we resign ourselves to either substantial benefit reductions for seniors or repetitive tax

increases. We must act now. Either my generation, the children of today's Medicare beneficiaries, will have greatly reduced opinions in the future, or our children will incur unprecedented tax increases.

Now, the President of the United States has failed to address this imminent financial crisis. In fact, the Clinton administration predicts Medicare expenditures will grow by a staggering 66 percent over the next 5 years. Yet, despite this forecast and despite the findings of the Medicare trustees and the entitlement commission, the President failed in his fiscal year 1996 budget to recommend even one measure to save Medicare.

We must act now. I expect that the President will rely simply on tax increases to maintain the program in the future, and that will work only for a short time, because it fails to address the underlying cause of the crisis. If nothing is done, the Medicare portion of FICA taxes would have to be raised by 125 percent. That is more than $700 taken out of a $40,000 salary. That is intolerable. Structural improvement is necessary if we are to protect and preserve Medicare in the long run. We can and will protect and save Medicare if we act now.

I will be taking time over the next several days to come back to the floor to continue this discussion of how best this Congress is to save Medicare.

I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, I ask unanimous consent I be allowed to speak for a period of time not to exceed 15 minutes as if in morning business.

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

Mr. BRYAN. I thank the Chair.

WELFARE REFORM

Mr. BRYAN. Mr. President, we are about to be engaged in a debate in this Chamber on welfare reform, an issue which has failed the recipients, has failed the American taxpayer, and on which I think men and women of good will on both sides of the political aisle agree we must undertake some major structural reforms. I think that we can do so in a bipartisan fashion.

It was in this context during the recent April recess that I spent an entire morning at one of the busiest welfare offices in Las Vegas, the West Owens District Welfare Office. May I say, Mr. President, to my colleagues, it was an educational opportunity, and if my colleagues have not previously done so, I would urge each of them to avail themselves of this opportunity.

I first sat in on a welfare eligibility interview, a process that lasts for approximately 1 hour. I observed this process from the beginning to its conclusion.

In the Owens Welfare Office, eligibility workers sit in very small interview rooms, somewhat affectionately referred to as the ''chutes.'' The eligibility worker has a desk literally surrounded on all sides with shelves full of various forms and regulations that deal with the nearly 20 different programs a person in need of welfare assistance may be eligible to receive. The client comes into the interview room from the reception area, sits across from the eligibility worker's desk, and the interview process begins.

Now the interview I observed, contrary to some of the stereotypical images that are often projected, was of a young Caucasian woman. She was married, living with her husband and two children. Her situation represents the prototype of the kind of problem that many people in America face who seek welfare assistance.

She and her husband had moved to Nevada from California, and currently both are working. Although their jobs pay above the minimum wage, they are still unable to provide for their family of four. Her employer structures her workweek so that her hours do not exceed 20 hours per week, and so she is ineligible for the medical benefits which her employer pays for those who work full time. One of her children has a preexisting medical condition, so medical care is a necessity. Her husband's employer provides no medical insurance. She also needs to pay for the cost of child care, and her child care cost is more than 50 percent of the gross hourly wage that she makes each hour.

Following this eligibility determination interview, I sat down to a very frank discussion with eligibility workers concerning the areas of the welfare system that they believe need reforming.

Let me say, Mr. President, I had anticipated the thrust of the comments would be that you all in the Congress need to provide more money; the system works. In effect, I thought I might be hearing a defense of the status quo, because these are eligibility workers, the committed and dedicated people who choose, in terms of their own educational background and their work experience, to provide care to others. So these are highly compassionate, sensitive people who see the travail of life before them every day.

To my great surprise, they are as enraged and as frustrated and as angry as are the American people and each of us who, as Members of Congress, have had a chance to look at this system that has failed so abysmally. Their suggestions and comments to us, I think, are extremely worthwhile for us to consider. They are the people that are on the front lines. They know the nuances of the system. They know how the system is ripped off. And they also know of its shortcomings in providing help to those who all of us in this body would acknowledge are in genuine need of help.

As one of the underpinnings of the welfare system, I think all of us can agree, whether we position ourselves in the political spectrum to the left of center, to the right of center, or in the middle, that we want a system that encourages people to work.

Most of us in America have a work ethic that is part of our background. It is part of what our parents shared with us. And, for whatever measure of success we may have achieved in life, it is the presence of that work ethic that contributed to that success.

But a person who is on welfare, who gets a job, who achieves that first rung on the job ladder, oftentimes is confronted with a horrific choice. Immediately that individual may be cut off from all medical care, all child care assistance, and that individual may, in fact, find herself in a more disadvantageous position than before she attained employment.

That part of our system, it seems to me, ought to be fundamentally changed. We ought to be encouraging and rewarding those people like the young applicant whose interview I observed, who is going out, getting a job, and trying to help herself and her family.

Our present system provides all of the disincentives by not providing transitional help for her, so she can get a little better job, that pays a little bit more, so that she is able to provide for herself and her family. That, it seems to me, ought to be one of the structural incentives that any welfare reform ought to encourage.

The welfare system is replete with conflicts, both indefensible and maddening. It is the sort of thing that encourages the American public to react as it does when the word ''welfare'' is mentioned.

I would like to talk about a few of those, if I may, Mr. President.

One of the key policy problem areas the eligibility workers brought to my attention is how the term ''household'' is defined for determining the eligibility of individuals living together at one residence for different welfare assistance programs.

One of the most egregious examples of how policy and effect conflict is the Food Stamp Program definition of ''household.'' Assume with me for the moment that two families have the same number of family members, and the same income. Applying the ''household'' definition can mean a family where everyone is a legal citizen is ineligible for food stamps, while a similar family with one member, who is an illegal alien, is eligible for such assistance.

Let me be more specific.

Let us assume family A and family B both have a total monthly household income of $1,200, and each parent individually earns $600. Family A's two working parents are both legal citizens. Family B also has two working parents, but one is an illegal alien.

Under the present system, in determining eligibility, the eligibility worker looks at the household members, and finds two working parents who are legal citizens. The worker must count family A's full $1,200 monthly income. Since family A's total household income is more than the monthly gross income allowed for food stamp eligibility, which is $1,066 for a two-person family, family A is ineligible.

However, with family B, the eligibility worker looks at the household members, and does not count the $600 income from the illegal alien parent. Only the half of family B's gross monthly household income earned by the legal citizen parent is counted. Family B's gross monthly household income is only $600 a month, well under the maximum allowed.

Family B, with the illegal alien, receives food stamp assistance. Although technically the illegal alien member of family B does not directly receive food stamps, it is the member's presence as part of the household that allows for this incongruous and indefensible result.

Why, I would ask, are we penalizing the two-parent working family whose members are legal citizens by denying eligibility for food stamp assistance, while allowing a two-parent working family with an illegal alien family member to receive assistance? Would it not be fairer to determine a family's eligibility for assistance by looking at the total income of the household rather than by who is in the household?

That is whether the individual parent is illegal or a legal alien. This is a situation that must be corrected.

On the other hand, the Food Stamp Program specifically requires welfare offices to report any illegal alien who tries to apply for benefits. However, there is no similar requirement for the Aid to Families with Dependent Children Program. Why? It makes no sense as a matter of policy.

Throughout this country, people are justifiably angry about illegal aliens who have access to our Nation's welfare system. We can and we ought to, at the very least, require all of our welfare assistance programs to provide information and to report illegal aliens to the Immigration Service. We have all heard from INS that there is simply not enough staff and funding available to investigate every alleged illegal alien, and that priority decisions must, by necessity, be made. But we are creating an atmosphere where those who test the welfare system feel relatively safe in attempting to defraud it. If we do not want illegal aliens to receive benefits they are not entitled to, we need to ensure adequate resources are available to prevent it from occurring.

Another area of policy conflict occurs with young teenage parents. We require young teenage parents under 20 years of age to participate in education and training programs or lose their eligibility for AFDC assistance. But once that same young parent turns 20, she continues to be eligible for AFDC benefits, while no longer being required to participate in any education or training program or to work.

So what kind of an incentive do we create for those mothers not to participate in education or job training programs and not to work?

Millions of American women in this country are single heads of households who get up every morning, get their kids ready to go to school, get themselves out in the job force, and yet we provide no assistance for these women. And the welfare system, as it is currently structured, provides assistance for those who neither seek employment nor participate in job training programs. Again, this is a policy conflict we ought to correct.

The eligibility workers also pointed out to me the difference in treatment under the Food Stamp Program between disabled seniors living on limited incomes and homeless people. Disabled seniors who usually have a house many times are eligible to receive only $10 a month in food stamp benefits. I was told by one eligibility worker that she actually sees seniors with cases of obvious malnutrition, something she said would just break your heart, but she is unable to provide more than $10 under the system the way it is currently structured.

On the other hand, a homeless person gets expedited service, has benefits available in 5 days, and is able to get the full benefit of $115 a month. It seems to me there is a dichotomy here that is irreconcilable. In the one instance, everyone agrees the deserving senior, who currently gets only $10 a month, desperately needs more to survive, and yet she is not provided that assistance.

Another example of a policy and an effect in conflict occurs when an unmarried man and woman live together. Each person is considered separately to determine eligibility for food stamp benefits, even if the woman is pregnant with the man's child. It is only after their baby is born that the man and woman are considered to have a child in common, and are then treated as a married couple, and are no longer eligible for separate individual benefits.

Also, couples who were married, who divorce, but continue to live together can be certified as separate persons for food stamps as long as they do not have a child in common. We ought to be encouraging, as a matter of public policy, people to be married and to raise their children as a family. Allowing this aberration—two people living together, previously married, divorced, and now able to receive welfare assistance—clearly is a disincentive we must correct.

Intentional welfare fraud can also result in a conflict between policy and effect. If a person receiving aid to families with dependent children benefits is discovered to have committed an intentional welfare fraud, the fraud sanction is to reduce benefits by up to 10 percent or to eliminate the AFDC benefit. The same family may then be eligible for more food stamps and a higher housing allowance because of the reduced AFDC cash benefit, a benefit which was reduced as a consequence of their intentional fraud perpetrated upon the system.

That creates the situation in which there is essentially no penalty for this person, because the reduction in AFDC cash benefits is likely to be offset by increases in benefits from other programs.

Under the Food Stamp Program, the penalty for fraud is either a 10- or 20-percent reduction in benefits. However, the reality of this situation is when someone commits a fraud, the welfare system basically ends up paying such people to pay the system back for the previous fraud from one program, by increasing that person's benefits from other programs. It makes absolutely no sense at all, Mr. President.

I have long been a supporter of strengthening our ability to enforce the payment of child support from irresponsible parents. It came as a surprise to me to learn that the Food Stamp Program, that I have long supported as an essential part of our safety net program, does not require—does not require—its recipients to participate in efforts to try to retrieve unpaid child support payments. All Federal welfare assistance programs must require its recipients to cooperate in State and Federal efforts to recover outstanding child support payments. We need to use every available option to bring delinquent parents back to the reality of their financial responsibility for their children.

The eligibility workers also brought to the table suggestions for ways to help eliminate these policy conflicts.

First, they suggest more standardization of eligibility requirements for all welfare programs. This would particularly help to prevent a fraud penalty reduction in benefits in one welfare program resulting in an increase in benefit eligibility in other programs, the net effect of which is to provide no net income loss or penalty for the individuals seeking to defraud the system.

They also suggest the penalty percentage reduction be made more flexible to allow for differences in the degree of frauds. Additionally, the eligibility workers would like to see fraud penalties follow the person. By that, Mr. President, we mean that under the current system, an individual who is identified as having perpetrated a fraud in one State can collect and apply for benefits in another State.

If a person commits a welfare program fraud in one State, and then moves to another State, the person's fraud penalty from the first State should follow the person to the second State for collection.

Also, all welfare programs should require their recipients to participate in

State and Federal efforts to collect delinquent child support. As I stated before, we need to avail ourselves of all options available to ensure child support payment is enforced. When I reintroduced my child support enforcement legislation, my new bill will provide all welfare program recipients cooperate in child support enforcement efforts, as a condition of their receipt of assistance.

I want to reemphasize how much each of us can learn from the practical knowledge these frontline eligibility workers have about how the welfare system works, where the problems are, and what the possible solutions are to address them. They are not defenders of the welfare system status quo. They see both the positive and the negatives of the current welfare system, and they are just as frustrated with the welfare system as are the public and Members of Congress.

The welfare system must be substantially changed, and on that we can all agree. We can all agree too that there will always be people who will need the safety net welfare assistance provides at some time in their lives, and we must ensure the net is there for them.

But as the Senate begins its deliberations on welfare reform, we need to heed the lessons learned by these eligibility workers. As we make the necessary changes, let us always remember to work to ensure the current policy conflicts are not carried forward. Let us not create more unintended consequences when we change the system.

I yield the floor.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Colorado.

Mr. BROWN. Parliamentary inquiry. What is the business before the Senate?

The PRESIDING OFFICER. The pending business before the Senate is amendment No. 599.

Mr. BROWN. Mr. President, I rise to advocate the adoption of the Brown amendment No. 599 that proposes to restore the sanctions against frivolous actions of the Federal Rules of Civil Procedure.

Most Americans would be shocked, I believe, to find that the Congress has acted to gut the restrictions against bringing frivolous legal action. Many will ask in this Chamber, ''How is that possible? Who in this Chamber would possibly vote or even advocate doing away with restrictions on bringing frivolous actions in Federal courts?'' And the answer is that the previous Congress did it through neglect. The last Congress took what I believe most Americans will find to be an absolutely outrageous act by neglect, by refusing to consider the proposed changes to the Federal Rules of Civil Procedure. Proposed changes in the Federal Rules of Civil Procedure become effective automatically if Congress fails to act, and that is what Congress did—fail to even consider them.

There literally was not a bill brought up in the Judiciary Committee which allowed Congress to voice its concern about the proposed changes to the Federal Rules of Civil Procedure.

To make matters worse, the changes to rule 11 eliminated the deterrence against frivolous lawsuits. Let me quote the dissent from the Supreme Court opinion with regard to this matter:

> It takes no expert to know that a measure which eliminates, rather than strengthens, a deterrent to frivolous litigation is not what the times demand.

Mr. President, that is true, and what we attempt to do with this amendment is simply restore to the Federal Rules of Civil Procedure a form of sanctions and admonitions against bringing frivolous litigation. I intend to ask for a record vote on this, and it will be an opportunity for Members of the Senate to go on record: Do they favor our Federal courts being used to bring frivolous action, groundless action, or do they oppose it? It is a very clear vote. It is a very clear amendment. It is not complicated.

I think a legitimate question at this point is how in the world could a change of this kind ever possibly have taken place without someone standing up and calling the attention of this body to it and making sure it did not happen?

Let me address that because I think it is a relevant question and one to which Members deserve an answer.

In transmitting the changes to the Federal Rules of Civil Procedure, Chief Justice Rehnquist, in his letter of April 22, 1993, said the following:

> This transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

For those in this Chamber who think the fact this was transmitted to us by the Supreme Court means they agreed with it, they need to take a look at the very transmittal document itself. The Chief Justice makes it clear that this does not involve, or necessarily indicate, the Court favors these changes.

Mr. President, I think it is important to note that none other than Justice White issued a separate statement with regard to that, and I intend to go into his statements voicing his concern about the procedure, and the dissent was filed by Justices Scalia in which Justice Thomas joined and Justice Souter joined as well.

I might mention that dissents with regard to changes in civil procedure are very unusual, and it is an exceptional case in which anyone ever dissents because, frankly, as Justice White points out, it is their view that there is some constraint on the Court through questions of constitutionality and of what role they should play in this activity, which is basically a form of legislation.

Let me quote Justice White because I think he explains this process in a clear fashion:

> 28 U.S.C. Section 2072 empowers the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for cases in the Federal courts, including proceedings before magistrates and the court of appeals. But the Court does not itself draft and initially propose these rules. Section 2073 directs the Judicial Conference to prescribe the procedures for proposing rules mentioned in section 2072. The Conference has been authorized to appoint committees to propose such rules. These rules advisory committees are to be made up of members of the professional bar and trial and appellate judges. The Conference is also to appoint a standing committee on rules of practice and evidence to review recommendations of the advisory committees and to recommend to the Conference such rules and amendments to those rules as may be necessary to maintain consistency and otherwise promote the interest of justice. Any rules approved by the Conference were transmitted to the Supreme Court which, in turn, transmits any rules prescribed pursuant to section 2072 to the Congress.

Mr. President, what he has outlined quite clearly is that these changes in the rules, while transmitted through the Supreme Court, do not necessarily represent the views of the Court—a view echoed by the Chief Justice.

Further, Justice White states:

> The Justices have hardly ever refused to transmit the rules submitted by the Judicial Conference. And the fact that aside from Justices Black and Douglas it has been quite rare for any Justice to dissent from transmitting such rules suggests that a sizable majority of the 21 justices who sat during this period concluded that Congress intended them to have a rather limited role in the rulemaking process. The vast majority, including myself, obviously have not explicitly subscribed to the Black-Douglas view that many of the rules proposed dealt with substantive matters the Constitution reserved to Congress, and that in any event were prohibited by 2072 in injunctions against abridging, enlarging, or modifying substantive rights.

Mr. President, I mention this because I think it is critical as Members consider this subject to ask themselves whether or not the changes that went into effect automatically carried with them an aura that we should respect and honor and not question or even review. Justice White concludes in his opinion that was transmitted stating this:

> In conclusion, I suggest it would be a mistake for the bench, the bar, or the Congress, to assume that we are duplicating the functions performed by the standing committee of the Judicial Conference with respect to changes in the various rules which come to us for transmittal.

Mr. President, I believe the record is quite clear. It is a mistake for anyone to come before this body and to suggest that the fact that the Supreme Court transmitted these proposed rules changes means that they think they are good rules changes. I think the statement of Justice White, and particularly the dissent of the three Justices, which is almost unprecedented,

indicates very clearly that the Court itself has serious concerns.

Mr. President, the reality is this: Congress has the power in the Constitution to enact statutes. Congress did not perform its function because no vehicle was allowed to be considered. That is why I think it is important that we provide for the consideration of these changes right now. Let me state quite clearly, I would like to go back to the old rules. I think the old rules were not only far superior to the changes that happened by default, but I think they were much stronger. But the amendment before you is a version that is somewhere between the old rules and the new rules. The amendment adopts or accepts many of the changes that seemed to have articulable support behind them or for which the Trial Lawyers Association could come forward with reasonable arguments. So this amendment does not go as far as I would like it to. It does not restore the old rules. But it does restore a portion of the old rules in areas where I felt there was literally no reasonable justification for accepting the gutting changes proposed by the Judicial Conference.

Mr. President, rule 11 is one of the most important tools courts have to fight frivolous, baseless, and harassing suits. This amendment gives Members a chance to go on record on that question. Do you want frivolous actions brought? Do you want baseless and harassing suits cluttering up our courts or not? That is what this amendment is all about.

Swift action against frivolous lawsuits and claims save time and money and taxpayers' dollars and promotes public respect for the integrity of the Federal court. I think that may be the most single important question raised by this amendment and those rule changes. Shouldn't our Federal courts require integrity in their process and substance in the allegations? Those who want to gut rule 11 will say, no, we should not have any restrictions in this area. But I believe maintaining the integrity of the Federal court system is important, and that is why this amendment is brought before the Senate.

The new version of rule 11, which was changed upon the recommendation of the Judicial Conference, eviscerates the deterrent value of rule 11. That is not just my opinion. It is the opinion of attorneys and judges who have reviewed the action and who share my concern about our turning our backs on ensuring the integrity of the Court.

The December 1, 1993, version of rule 11 allows frivolous lawsuits to go forward. It allows baseless lawsuits. It actually allows attorneys to file allegations without knowing them to be true. Let me repeat that because I think it is the core of what we are talking about. It allows attorneys to go into court and to file allegations without knowing them to be true.

How can anyone come before this body and say that makes sense? How can anyone come before the American people and say we are going to set up a court system in which you are going to have filings in which even the paid advocate of the cause does not know to be true? Mr. President, the rules allow attorneys to make assertions without any factual basis and before they have done their research. Let me repeat that. It allows attorneys to literally make assertions without having any factual basis for those assertions. It is scandalous to suggest that our courts are going to be used for hearings on allegations that have no factual basis and before any research is done. That is ludicrous, it is shameful, and it is why it is so important for us to move ahead and to correct what is clearly an abuse by and neglect of previous Congresses.

In short, the December 1, 1993, version encourages the kind of baseless suits and claims which rule 11 was literally enacted to prevent. The new rule 11 says, ''Sue first and ask questions later.''

Mr. President, that is not an exaggeration. That is literally what rule 11 allows in its current form. Sue first and do research later.

What this amendment does is put teeth back into rule 11. It does so by making sanctions for frivolous suits mandatory, as they once were.

Mr. President, I want to take a few minutes and go through specifically what this amendment does, how it compares with the old rule, and how it compares with the new rule.

I think it is important for Members to know and understand that what is before them is a very moderate version. The amendment adopts many of the changes the Judicial Conference wanted. But it does not adopt the concept that we will gut rule 11 and threaten the integrity of the court system.

How can anyone looking at our Federal court system want to allow courts to be cluttered up with frivolous actions? The facts are these: In 1990, over 10 percent of the Federal district court cases were over 3 years old. Mr. President, we have such a huge backlog that we literally have more than 10 percent of the cases who, after 3 years, have not been resolved.

The current trend of more and more cases filed in Federal court continues. In 1992, over 226,000 cases were filed, and literally, under the current trends, the number of cases will double every 14 years. In the face of eviscerating rule 11, Congress did not act to save the one effective tool that deters frivolous litigation. Congress allowed a new rule to be adopted that weakens the process despite evidence and opinions of judges and lawyers.

Mr. President, I want to go into those opinions because the judges and lawyers that work with this are alarmed at the changes in rule 11. Someone will say, well, now, wait a minute, at least there was a committee, there are some people who admit they like these changes, and that is the Judicial Conference Committee that dealt with this. Take a look at the attitudes of the bar in general, because one should not assume that the fact that the Judicial Conference or, more specifically, a committee of that conference, made the recommendations, that they speak for attorneys and judges across this country.

Here are the facts: In a recent study by the Federal Judicial Center, they found that a strong majority of Federal judges support the old rule 11, not new rule 11, but the old rule 11. The study found that 95 percent of Federal judges who responded believed that rule 11 does not impede the development of law. They found that 71.9 percent believe that the benefits of rule 11 outweighed any additional requirement of judicial time. They found that 80.9 percent believe the old version of rule 11 had a positive effect on litigation in the report. Mr. President, let me repeat that: Over 80 percent of the judges felt the old version of rule 11 had a positive impact on litigation in the Federal courts. The proponents of the new form of rule 11 that come to this body and claim this somehow has the blessing of the legal community have not looked at the facts. This had the blessing of a group of insiders, of a committee, but it did not have the blessing of the bar as a whole. Over 80 percent believe the old rule 11 should be retained in its current form.

Mr. FORD. Mr. President, would the distinguished Senator from Colorado take a question?

Mr. BROWN. I would be happy to take a question at the completion of my remarks.

Mr. FORD. I wanted to insert because the Senator said ''of those judges responding,'' and I did not know whether half responded, 25 percent responded—the Senator is using the 80 percent—or whether 100 percent responded and the Senator is using 80 percent. ''Of those who responded,'' I wonder if it was a large number or a small number.

Mr. BROWN. I appreciate the question of the distinguished Senator. I think he may not have heard in my remarks I quoted the 1990 study of the Federal Judiciary Center, and I will be happy to supply the Senator with the study.

It might also be noted that rule 11 issues were raised in only 2 to 3 percent of all cases; that they concluded that rule 11 imposes only modest burdens on Federal judges and that rule 11 sanctions have typically been taken in the form of monetary charges payable to the injured party.

Mr. President, I want to turn now to the rules changes themselves. I will, of necessity, deal and focus particularly on three of them. There are additional nuances, but I think these three are the most important and at the heart of the amendment that is before this body.

Mr. President, the first one that we want to look at is the old rule, which required that the attorney or the party

must sign the pleading of the motion and indicate that the facts designated therein represent the best of the signer's knowledge and that they are based on information and belief formed after a reasonable inquiry that is well grounded in fact and that is not interposed for improper purposes such as to harass or cause unnecessary delay or needlessly increase the cost.

Mr. President, the new rule guts those provisions that are meant to ensure integrity in the process. Here is how it reads:

By presenting to court, an attorney is certifying the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

The option which then controls is ''or likely to have support, if investigated.'' In other words, they do not have to certify any longer that they are true or that they have investigated them. They are literally saying we can bring filings in the court that have not been investigated and which a person does not know are true.

Here is what we do with the version that is presented in this bill. We say, ''by presenting to court, an attorney is certifying the allegations and other factual contentions have evidentiary support or are grounded in fact.'' It is less severe than the old rule. I would like to go back to the old rule. But at least this amendment requires that the allegations are grounded in fact or have evidentiary support.

Now, that is a clear question. Should filings in Federal court be grounded in fact? Should they have evidentiary support? Or should a person be allowed to find anything they want without a requirement of knowing that it is true? Or even having been required to investigate it before it is filed? It is a very clear question. It is one I think Members will be anxious to cast their vote on and let citizens know how they feel.

The second change deals with an additional question. Let me read the old rule:

If a pleading, motion or other paper is signed in violation of this court rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party or both, an appropriate sanction.

In other words, if a person is guilty of violating the rules, that person will get sanctioned. That must not sound very unusual for observers. Why would we want to change that?

The new rule does a couple of things. What it says is that if a person is guilty, if they violate the rules, a person does not have to be sanctioned. In other words, an opposing counsel can point out that this was done without any background, and when the attorney—who has made an inaccurate filing, when an attorney who has violated the rules—is caught, the new rules say that even though you are guilty, even though you have been caught, even though you have caused the other party harm, you can get off scot-free. That is not my idea of justice and I do not think it is the American people's idea of justice.

Here is what we do. We restore that portion of the old rules that says if you are guilty you are going to get sanctioned. It leaves it up to the court to decide what the appropriate sanction is, but at least we say if you are guilty of violating the rules and it is shown to the court, you will be sanctioned. Those who want violators to get away without being sanctioned will want to vote against this amendment. But those who think if you are guilty you ought to be sanctioned will want to vote for it.

The third one I want to summarize is one that I think Members will find hard to imagine that the committee recommended. The new rule says that if you are guilty of violating the rules, and even though under their changes you do not have to be sanctioned, but if you are sanctioned even though you do not have to be sanctioned, then they say the penalty for this misbehavior can be paid to the court and not to the injured party. Talk about rigging the rules. They are saying: First of all, we are going to dilute what is impermissible behavior; but if you are found guilty of impermissible behavior even under the diluted rules, you do not have to be sanctioned; and even if under the diluted rules you are found guilty and you are sanctioned, the money does not go to the injured party. In other words, they pull the rug out from under any incentive of the injured party to seek redress.

The amendment addresses the third area in a pretty basic and simple way. It restores the preference that if you are guilty and if you are sanctioned, the awards first go back to the injured party, not to the court. The amendment reads as follows:

A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party.

In other words, we eliminate the priority that the sanction go to the court and give the court discretion in that area. That is basically what we are talking about in this amendment. We restore to the rules some of the integrity of the process. We indicate that there will be sanctions if you are guilty, and we eliminate the favored status of having the penalty, if it is imposed, go to the court and allow it to go to the injured party if they wish.

This does not solve all the problems with frivolous litigation. I wish it did. But it does restore some of the integrity to rule 11 and some of its effectiveness.

I want to quote the dissent signed by three Justices of the Supreme Court when they forwarded these. It is very unusual for dissents to be written in these transmittals, but I think the words speak for themselves.

In my view, the sanctions in the new rule are not strong enough; thus, the new rule eliminates a significant and necessary deterrent to frivolous litigation . . . and perhaps worst of all introduce into the trial process an element that is contrary to the nature of our adversary system.

That is what this is all about. Will we eliminate a deterrent to frivolous litigation? Will we burden the district courts? That is really what this is all about. I think a reasonable question could be raised at this point and that reasonable question would be simply this: Do lawyers, do attorneys behave differently if these sanctions, monetary sanctions exist? If there are mandatory sanctions for violating the rules, does it affect the behavior of attorneys? That is the assumption this process is based on anyway, that by having a rule that prohibits frivolous litigation and provides mandatory sanctions, that counsel will behave differently; they will behave different if they have to pay a mandatory penalty than they will if they do not.

There is some evidence on that. There is some evidence because before 1983 you did not have mandatory sanctions and after 1983 and before this recent change you did have monetary sanctions. So there was a study done. It is known as the Nelken study, by Melissa L. Nelken. She did a study of rule 11 and she considered the impact on the Federal practices of both lawyers and judges in the northern district of California. It is confined to that area. It was part of the ninth circuit.

The survey questionnaire was sent to some 17 judges, 7 magistrates, and 107 attorneys. All of these individuals had been involved in rule 11 proceedings. That was done to make sure the survey was conducted among people who had some knowledge of the process and some experience with it. Mr. President, 68 attorneys, 64 percent of them, responded; 12 judges or magistrates, or 50 percent of those, responded to the survey. Here is what it showed.

The question was, ''Has amended rule 11 changed your practice, if any, in the following areas?''

The change they are talking about is the change of making sanctions mandatory in 1983. Mr. President, 46 percent of the respondents indicated that they had engaged in additional prefiling factual inquiry. What we are literally seeing is 46 percent of those attorneys, those practitioners, those on the line, had said when sanctions are mandatory they engaged in more prefiling factual inquiry than they did when they were not mandatory. I think that is a plus. I think that improves the integrity of the system.

Mr. President, 33 percent indicated additional prefiling legal inquiry; that is, when sanctions were mandatory, 33 percent indicated—admitted that they had done additional prefiling legal inquiry over and above what they did when sanctions were not mandatory.

This is only one study. It is a limited area. But I think it is real proof of

what our common sense would tell us. When sanctions are required there is more work that goes into making sure the filings are correct than when there is no sanction.

I want to take one more quote out of the opinion of the Supreme Court accompanying the recommended changes in 1993. This is at the conclusion of the dissent. It says as follows:

> It takes no expert to know that a measure which eliminates rather than strengthens a deterrent to frivolous litigation is not what the times demand.

I do not think it could be said any clearer. Should we eliminate deterrence to frivolous litigation? That is what this amendment is all about. If you favor deterring frivolous litigation, you will want to vote yes. If you do not want to deter frivolous litigation, then you will vote no.

It boils down to these substantive changes in the rules—to efforts to restore these basic rules: First, should filings be grounded in fact? I think they should.

Second, should sanctions be required if you file frivolous actions? If you are found guilty of filling frivolous actions, should sanctions be required? I think they should.

Third, should the injured party have a standing for compensation, or more particularly should the priority of the court be to have a sanction for someone who is guilty, and should the priority be for that money to go to the court, or should it be the priority or at least the option for that money to go to the injured party? I think the injured party should not be shortchanged in this process.

These are moderate changes in rule 11. Again, they do not go back to the old rule 11 which I would like to. They do adopt some of the changes proposed by the conference. But, Mr. President, this is an important matter because this is an effort to restore the integrity to the legal process. It is an effort to restore integrity to our courts and discourage frivolous actions by restoring rule 11. I think it is appropriate for this bill. I do not think the amendment could be more appropriate because at the heart of addressing the problems with the litigation system in the United States—at the heart of it—is to restore integrity to the system. That is what this amendment is intending to do.

Mr. GORTON. Mr. President, I would like to comment very briefly on the eloquent remarks of my friend from Colorado. His remarks are equally and highly thoughtful and persuasive. There is no question but that this Senator strongly supports his judgments with respect to rule 11 and the desirability of a return to a much more fair and balanced such rule.

At the same time, Mr. President, I must say that rule 11 has little if anything to do with the subject before the Senate, the product liability bill, which almost universally will apply to litigation brought in State courts and, therefore, whether or not it is appropriate to be included with this bill is a question which I think relates primarily to the attitude of Members of the body itself.

This is an extremely controversial bill. Should this strengthen its chances for passage, it would be welcome. If it weakens the chance for passage of something as important as product liability, I hope at some point or another the bill would be withdrawn and dealt with at a more appropriate time.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I rise today in support of the Product Liability Fairness Act which I consider to be a very important piece of legislation. I believe it is the principal first step in reforming our increasingly irrational, often unfair and very costly civil justice system. This system is burdening our economy, it is burdening America's consumers and its middle class; ultimately it is weighing down the community institutions and organizations that help us live together as friends and neighbors. By enacting product liability reform, we can begin reinvigorating our economy, giving consumers a choice of products and decreasing the expense and unpredictability of our tort system.

This bill makes a number of much-needed reforms. First, it caps punitive damages in product liability suits. This reform does not limit anybody's right to recover in full for any damages suffered. That right remains intact even if the recovery runs into the millions. Rather, it merely limits the punitive damages that can be awarded over and above what is needed to compensate those injured by defective products.

These punitive damages are supposed to function as a punishment for the defendant. But because they are awarded to claimants, their potential availability attracts lawsuits whenever somebody thinks he or she might get lucky and hit the jackpot.

Capping these damages will place a real limit on windfall profits in product liability lawsuits and thus lead to fewer frivolous claims being filed and less unnecessary extension of lawsuits which could be settled.

In addition, the bill would eliminate joint liability for noneconomic damages in product cases, and replace it with proportionate liability. It thus would end the costly and unjust practice of making a company pay for all damages when it is only responsible for, say, 20 percent, just because the other defendants already have gone bankrupt. Instead each defendant would have to pay only for the noneconomic damage he or she actually caused.

The bill also establishes important limits to the liability of product sellers, as well as suppliers of raw materials critical to the production of life-saving medical devices. Generally speaking, the bill makes clear that these sellers and suppliers can be held liable only for their own misconduct in connection with the product. If, for example, the purchaser misuses the product, then that purchaser is responsible to the extent he or she is injured on account of his or her own misuse.

These provisions go a good way toward restoring individual responsibility as the cornerstone of tort law. They also recognize an important problem with our legal system: Ultimately, in its current form the system is profoundly anticonsumer.

The tort tax imposed by our legal system raises prices on many important goods, rendering them unavailable to poor people. And in extreme cases, our legal system can literally bring death or misery; it does so by driving off the market drugs that can cure terrible but rare diseases, or medical devices for which raw materials are unavailable on account of liability risks.

Mr. President, this is not mere hyperbole. There are some 5,000 diseases that affect small numbers of Americans. Many of these diseases, such as cystinosis, a fatal kidney disease, and leprosy, are extremely serious. But a number of them go untreated. Pharmaceutical companies cannot afford to market drugs to treat these diseases because the cost of liability insurance is prohibitive.

To give just one example: A West German chemical company at one time supplied Americans with botchyoulinum. If properly used this drug, otherwise a paralytic poison, can control a rare but incapacitating disease, characterized by uncontrollable twitching of the eye muscles. Unfortunately the company cut off American supplies to avoid the risk of being held liable should people misuse its product.

And this is no isolated instance. A recent Gallup survey found that one out of every five small businesses decides not to introduce a new product, or not to improve an existing one, out of fear of lawsuits. And, according to a Conference Board survey, 47 percent of firms withdraw products from the market, 25 percent discontinue some form of research, and 8 percent lay off employees, all out of fear of lawsuits.

Mr. President, this bill takes important steps to address these problems. The reforms I have specifically noted, as well as others in the bill, will help consumers. They will help our economy. And they will help our legal system. I pledge my full support for this well-considered legislation.

However, I would also like to take this opportunity to urge my colleagues to go further. And I mean go further in two respects. First, the reforms under consideration apply only to product liability. That is, they affect only suits involving manufacturers' and sellers' liability for defects in manufacturing and handling products. And second, the reforms do not address certain key flaws in our civil justice system.

The problems with our current system are deep and pervasive. They are

not limited to product liability. They affect homeowners, accountants, farmers, volunteer groups, charitable organizations, small businesses, State and local governments, architects, engineers, doctors and patients, employers and employees. In short, they affect all of us.

We need to repair our system for all Americans. And doing that will require reforms that go beyond the field of products liability. We must replace our litigation lottery with a civil justice system that is less costly, more predictable, and ultimately more fair to everybody. And we must replace the current incentives to sue with incentives to settle disputes before they get into court.

This is why in the course of the next few days I intend, along with others, to offer and support amendments that would broaden the legislation currently under consideration.

These amendments fall in two classes. The first class takes valuable reforms currently in the current product liability reform bill and applies them to other kinds of cases. Thus I will be leading an effort to broaden application of this bill's joint and several liability reform and supporting an effort to broaden application of this bill's punitive damages reform.

The other category of amendment I am supporting would reorient our current system's distorted incentives. Today, Mr. President, our tort system encourages people to spend money on lawyers and litigation rather than on resolving disputes quickly and compensating deserving claimants.

The right to know and rapid recovery amendments I have introduced with my colleague from Kentucky will promote speedy compensation for claimants, save attorney's fees, greatly reduce the cost of liability insurance and change our culture of litigation, which brings me to my last point, Mr. President. A broad approach to legal reform will help our communities. Our current system discourages the voluntarism and civic participation that hold our towns and neighborhoods together. A Gallup survey found that 8 percent of nonprofit organizations had volunteers resign over liability concerns; 16 percent reported volunteers withholding their services due to fear of liability, and 49 percent reported seeing fewer volunteers willing to serve in leadership positions.

This is disastrous, Mr. President. When almost half our nonprofit organizations are finding it more difficult to get people to serve in leadership positions, we are in trouble. When our citizens are afraid to serve their neighbors out of fear of being sued, we are in danger of losing that sense of common cause and mutual reliance that is at the heart of any community.

We have been hearing a good deal lately about the breakdown of our communities. And it is a real problem. This problem arises in part from peoples' understandable fear of local bullies and strangers who prey on them in their streets and homes.

But today our law-abiding citizens suffer from another even more debilitating fear: a fear of each other.

Too many Americans are afraid to get involved with their local little league or Girl Scouts or volunteer fire department because they seriously believe that if they make an honest mistake they will be sued and lose everything they have merely for trying to help.

So long as Americans see one another as potential plaintiffs, they cannot see one another as neighbors. So long as we encourage lawsuits rather than personal responsibility and early dispute resolution our citizens will fear even those they know well—and come to see them as strangers whom they themselves will sue at the slightest provocation.

Neighbors no longer trust one another enough to look out for each other, and each others' children. The result is a breakdown of mutual support and pride in the community, leaving it easy prey for other social ills like crime and delinquency.

We must break this destructive cycle, Mr. President, for the sake of our families and our children. We must begin to rebuild our communities by restoring the sense that we can count on one another's good will and forgiveness for innocent mistakes. We must restore trust among our citizens, and health and vigor to our economy, by remaking our civil justice system to reward neighborliness rather than stubborn greed.

Mr. President, we must reform our tort system so that we encourage people to come together on their own to settle disputes before they end up in court, costing time, money, and bad feelings.

The result will be a reinvigorated economy, more jobs and necessary products for us all, and a revival of that civility and common feeling some of us remember with regret from an era not too long ago; an era in which Americans thought of one another not as potential plaintiffs and defendants but as neighbors trying to help each other in making their community a better place.

Mr. President, I yield the floor.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank the Chair.

I am starting my seventh year in the Senate, and every year it seems as if we always come up with a product liability bill. I have served on the Commerce Committee under the leadership of Senator HOLLINGS and under the leadership also of Senator Danforth, who was a great champion of product liability reform.

I want to thank Senator GORTON, who has picked up the traces, so to speak, and especially to Senator ROCKEFELLER who through all of the years I have been here, starting the seventh year, has also played a very strong part in leadership on this issue, diligently trying to seek reform.

I have supported product liability reform primarily because I believe it is time now for Congress to act on what some would term barriers to economic growth in this country. And the need to reform our product liability system is no less urgent now while the economy is seemingly healthy than if we would experience economic downturn.

The current system drives up costs in nearly every sector of the economy and does very little to improve our quality of life and does very little to increase safety at the workplace. In the last 30 years, the number of cases filed in Federal courts has more than tripled, to over 250,000 a year.

Now, this issue, yes, is a jobs issue; it is a competitiveness issue, and some would term it even a moral issue. Currently, the typical American manufacturer faces product liability costs that are 20 to 50 times higher than that of his or her foreign competitor. This additional cost makes American companies less competitive; they lose market share to foreign competition.

So what do they do? They raise prices and they lay off workers. The costs of runaway litigation are felt by American companies, workers and, yes, consumers alike. It is not just a big business issue either. It affects small businesses as much if not more than our large businesses.

The 1,100-percent rise in the number of Federal product liability cases in the 1970's and 1980's has driven up the cost of liability insurance to astronomical amounts. The burden of this increased cost is proportionately much greater for small business and in some cases it is the element that is a ''make or break'' issue for them.

This issue is most often presented as a consumer issue, Mr. President. I disagree with those who say that if you are for product liability reform, you are against the consumer. I reject that argument. Consumers do not benefit when the business community has to protect itself from runaway lawsuits. They pay for it. As we have often been told, it just goes into the operating costs; that companies and corporations do not pay taxes either. People pay taxes. And the threat of lawsuits keeps the vital consumer products from the market and discourages safety and other improvements that would make it a better product. Moreover, liability stifles research and development for new consumer and medical products.

This bill seeks to bring fairness to a system without taking away an injured person's right to a fair and speedy trial and, yes, just settlement. Right now the system fails to compensate those injured in proportion to their losses and it takes them far too long to receive the compensation.

The people who benefit the most in the current system, let us face it, are the principals involved, the lawyers. Studies say that 50 to 70 cents of every

dollar a jury awards to an injured person goes to the attorney. This hardly seems like a system that benefits the consumer.

There is a tremendous amount of support for this liability lawsuit reform in my home State of Montana. In a recent poll, 89 percent of Montanans indicated that the current system has problems and it should be fixed. There is a growing awareness that the only winners in the lawsuit lottery game are the attorneys and the professional plaintiffs.

S. 565 will reform the current system to make it more effective. We must protect people from careless manufacturers and defective products. This bill does not compromise that objective. It just ensures that we do so in a fashion that still allows American businesses to compete and grow in a global economy.

Congress has the opportunity to reform our product liability system, and I hope that we do not miss this window of opportunity and that we take advantage of it. This bill must become law. I ask my colleagues to support it.

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

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

Mr. DOLE. Mr. President, I want to signal my strong support for S. 565, the Product Liability Fairness Act. My distinguished colleagues, Senators GORTON, ROCKEFELLER, and PRESSLER, are to be commended for their leadership on this particular legislation.

This legislation is needed for several reasons. Our present system of liability has been estimated to cost the American economy an astounding $117 billion. In addition to this tort tax, our system of liability stifles innovation and prevents better—often safer—products from reaching the marketplace. The present system of liability also undermines American competitiveness, both here and abroad.

There has been a concerted effort to spread misinformation about these reforms—scare tactics—in order to hide the real issues. So let me be clear: The reforms contained in this bill, despite efforts to portray them otherwise, do not prevent persons who are harmed from recovering full compensation for their injuries. In fact, this legislation addresses abuses that undermine such compensation. Nor does this legislation alter civil rights and environmental laws in any way. In fact, the legislation explicitly excludes such Federal laws.

What this legislation is about is fairness. Our legal system is one of the bedrocks of our free society. But over the last 25 years, it has succumbed to efforts to turn it away from American principles, individual responsibilities and justice. In many cases, our system of liability resembles a lottery, where damage awards become windfalls and often deserving plaintiffs do without.

Thus, I strongly support the provisions of this bill that seek to rein in abusive punitive damages. Punitive damages are not intended to compensate victims, as the name suggests, they are intended to punish wrongdoing. But punitive damages have been widely abused in recent years, and the problem now affects every American.

Mr. President, I plan to offer an amendment later today. As I understand, after a couple of votes and after disposition of the Brown amendment, I will be recognized to offer an amendment. That may be later tonight, 7 or 8 o'clock or it may be sometime tomorrow morning. In any event, I will offer the amendment later and expand on these protections at that time and what I believe the amendment does and does not do.

But I am talking about protection for Little League players, the Girl Scouts, and small business. Groups like that are at risk from abusive lawsuits and overwhelming punitive damages. I hope to give you some examples of how this affects the Girl Scouts, Little League, and others—how many boxes of cookies they have to sell to protect themselves from frivolous lawsuits, in some cases.

We cannot allow the threat of liability to keep hard-working Americans from volunteering their time to help. We must not allow the threat of liability to sink small businesses who often can barely keep their doors open.

Although I support the Rockefeller-Gorton bill, I believe we cannot simply stop with reforms that help big business alone. We have to take a look at small business and some of the charitable groups and other groups that most American families have contact with. It is as much our responsibility to help the little guy, and that is what my amendment will achieve.

This amendment leaves the underlying provisions on the measure of punitive damages intact. Thus, punitive damages would be limited to three times economic damages, or $250,000, whichever is greater.

What my amendment would do is to take the same provision in the underlying bill and extend these protections to Americans who are often least able to cope with outrageous punitive damages.

Thus, instead of limiting these protections to product liability actions, my amendment would extend them to ''any civil action affecting interstate commerce.''

I emphasize again that this amendment in no way undermines full compensation to victims, nor does it alter Federal laws.

Most of the issues raised by the Rockefeller-Gorton bill are well known. The Commerce Committee has considered similar legislation in the 97th, 99th, 100th, 101st, and 102d Congresses, and a similar bill was considered on the floor in the 102d and 103d Congresses. We will have a reasonable time to debate these issues, but it is my hope we will not engage in dilatory tactics to distract the Senate from moving forward on this important legislation.

Having said that, I hope we will complete action on this legislation sometime midweek next week. I know that on Friday of this week the Democrats have a conference outside the city and Republicans have a conference inside the city. But we will be in session late tonight and late, late tomorrow night and, hopefully, we can at that point see the end when we might complete action on the legislation.

It would be my intention to file a cloture motion if it appears we cannot complete action in a timely fashion. I will say, as I have said before, the Senate has a lot of work to do to catch up with many things that have been sent to us from the House. My view is we will get it done. It will mean we will have fewer recesses in the Senate. It means we will be here many more days probably than the House will be in the next 100 days. It will mean long evenings. But I hope my colleagues on both sides of the aisle understand that we have a responsibility, that we all made statements to get here to the voters of the United States, and we intend to keep our word to the American voters, win, lose, or draw.

So it is my hope we will have a very productive several weeks before the brief Memorial Day recess and that will be about the last recess, maybe with the exception of a couple of days July 4 and 5 before we decide what to do with the August recess. It is not a statutory recess. It can be changed by resolution and it may be if we cannot complete our work in time we might have to abbreviate the August recess. I hope that is not the case, because many of my colleagues have made plans to be with their families and made other plans. So we will do the best we can to accommodate people on both sides of the aisle.

I do believe that we have a responsibility. We know it takes longer in the Senate. We know the Founding Fathers planned it that way. This was to be the deliberative body and we are deliberate, believe me. Sometimes it is almost too deliberate. Today is an exceptional day because many of our colleagues are attending services for former Senator John Stennis. I think 25 of our colleagues are in Mississippi today. So that necessarily means we may not accomplish much until they return about 5 o'clock.

RECESS UNTIL 2:30 P.M.

Mr. DOLE. Mr. President, I am advised by staff and the manager of the bill on this side, Senator GORTON, that it will be about an hour before there will be speakers available. They are

now in a private session, as I understand it, discussing this measure.

I move that the Senate stand in recess until the hour of 2:30 p.m.

The motion was agreed to.

Thereupon, the Senate, at 1:22 p.m. recessed until 2:29 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ABRAHAM).

Mr. DOLE. Mr. President, I understand there are speakers on the way to the floor. In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONDOLENCES TO CITIZENS OF OKLAHOMA CITY

Mrs. BOXER. Mr. President, I wanted to add my voice, on behalf of the people of California, my voice that is going to say today that we send our love, our condolences, and our sympathies to our friends in Oklahoma.

A couple of California residents happened to be in that building at the time of the blast so we certainly share in this tragedy. I send my words of thanks to the incredible people who have shown up from all parts of this country to help the people of Oklahoma City cope with this tragedy.

I have a lot of thoughts and feelings, but rather than say them today, I will be writing them down because I do not want to misspeak or in any way say anything that could be misconstrued.

Today I just wanted to say that I am very fearful that what occurred in Oklahoma City could be a signal that America is losing something very special that we have always had, which is an ability to take our dissent and take it right to the ballot box.

If we lose that, and if we all do not guard against violence, we will lose the very essence of our Government, the Government of, by, and for the people. When we attack people who work for the Government, we are attacking our neighbors and friends, and indeed we are attacking ourselves.

One of the things that has concerned me for a long time is the dropoff in voter participation that I have seen. There are many people that are disgruntled and discontented with laws that are passed, the debates that we have here.

I encourage them to participate, to take that frustration and those feelings and organize politically and get your candidates here to the U.S. Senate, to the House of Representatives—whatever a person's philosophy, be it on the left, right, in the center, it matters not.

The beauty of what we have in America is this incredible democracy where everyone has a chance to get here. Certainly I got here very unexpectedly myself, a first-generation American—my mother never even graduated from high school—and I got to the U.S. Senate.

This is an open country and there is no need to harbor bad feelings toward one another. Here in this Senate we debate many times and we sometimes get angry at each other because we disagree with each other. However, it is done with respect. I only hope in the years that I am here it will continue to be done with respect.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mrs. BOXER. Mr. President, we have many problems that need fixing in our country. I just have to say that product liability law should not be one of the problems. It is not a problem. Yet we are here, facing this bill, S. 565, the Product Liability—it is called Fairness—Act when this is not a problem.

Why do I say this? First, this country has an enviable record of producing safe products. All the countries in the world wonder how we do it. Well, we have laws that hold people responsible if they produce a dangerous product. The people who want this bill want to change that law.

Why should we tinker with laws that contribute to one of the best safety records for products known to human kind? The only thing I can imagine is that there are some special interests who do not like it.

That is why, I think, we are here discussing S. 565, because it certainly is not going to contribute to safer products. Indeed, I say, if it passes—and I am doing everything I can so that it does not pass and it does not become law—it is going to contribute to unsafe products, products that harm the people of my State and products that will harm the people of this country.

Second, there are those who say that we have an explosion of frivolous lawsuits related to product liability, to dangerous products. I want to say unequivocally, and I will repeat it many times during this debate, that it is a figment of someone's imagination that there is an explosion of litigation around dangerous products.

Let me give the facts, because there is a lot of rhetoric around here. Product liability lawsuits are only one-third of 1 percent of all civil lawsuits in State courts. Let me repeat: They are one-third of 1 percent of all civil lawsuits in State courts.

Listen to this: In 25 years, the last 25 years, there have only been 355 punitive damage awards. Now, what is a ''punitive damage award?'' Punitive—meaning to punish. When a company harms an American citizen, a person using a product, because of shoddy manufacturing and a mistake was made, and the person is injured, say, burned beyond recognition, that company is sued for punitive damages, meaning, ''Let us punish the people who caused this grief''—sometimes for loss of life and limb.

In a single year during that 25-year time period, there were an average of 11 punitive damage awards. Yet this bill is going to limit punitive damages—the ability of an average person to walk into court and get justice—because this Congress has decided it knows better than a jury. There is no wave of frivolous lawsuits here. We know where the frivolous lawsuits are: businesses suing businesses. That is where the explosion is, but this bill does not deal with that. This is the Business Protection Act.

I find it really intriguing that many of the Senators who were pushing this bill, which would take precedence over State law, are the very ones who say let the States do everything else. ''Oh, let the States do the School Lunch Program. But we know better, all of a sudden, than the States and the State legislatures, when it comes to products liability.'' I find that really astounding.

This is a rigid law. How could we determine now what the cap on punitive damages should be? I assure my colleagues, if a multibillion-dollar corporation makes a mistake in building a bus and the bus explodes, to punish a multibillion-dollar corporation $250,000 or three times economic damages is not going to cut it. Why not just repeal punitive damages while you are at it? The reason is they cannot get the votes to do that.

This law would pretend to know all the facts of every case in advance without seeing them. We are the all-seeing Senators here. We are the all-knowing Senators here. We know every case in advance here, and we can say here, without any problem, we ought to limit the ability of juries and judges to make awards. We know all the scientific evidence, I suppose, and all the circumstances under which a product was sold and manufactured. That is what this bill says.

There are billions of products manufactured each and every year, and this bill says we can foresee that under no circumstances should a company have punitive awards greater than $250,000, or three times economic damages. We, the almighty Senators, know—better than a jury, better than the States.

S. 565 would shift the current level playing field against the average person in favor of big corporations and there is no question about it. It would remove much of the responsibility of manufacturers and sellers of dangerous products. They do not have to fear a big jury award. They can just write it off as a cost of business. So what if a drug you took made you infertile? So what if a product your child got a hold of caused that child great damage to his brain or his limbs? It would take away the hard-won rights of average citizens to a safe marketplace for

goods. That is why every major consumer group is fighting against this bill. There are many groups fighting against this bill.

But one group of companies love this bill. The tobacco companies love this bill. Because some day in the future, when some court finds out that they knew their products were addictive, they will be shielded by this bill. And each and every Senator voting for it will have to say to the people who lose their loved ones to smoking, ''You know, I didn't realize it when I voted for this S. 565. You're right, it would limit punitive damages for cigarette companies.'' But that is what we are about to do here.

Current law, that S. 565 seeks to change, contains incentives for manufacturers to consider possible dangers before selling products to the unsuspecting public. That law would be changed. This law gives corporations and sleazy, marginal retailers an incentive to sell a dangerous product. Consumer safeguards will be displaced.

I believe this bill is nothing more than special interest legislation dressed up with a virtuous title: fairness. These are the words you hear so much around Congress these days: fairness; products liability fairness. It is really not fairness, it is a repeal of sensible product liability law, law that has worked, law that has not resulted in an explosion of lawsuits. That is a myth.

The backers of this bill are powerful. I can say that. I mentioned the tobacco companies. Many of them are unseen. You do not see the tobacco companies lobbying around here, but they are behind this. I say the public has a right to safe products. They have a right to a legal system that deters the sale of unsafe products. And the public has a right to fair compensation if they are harmed by a dangerous product. Let me say that again. The public has a right to safe products. They have a right to a legal system that deters the sale of unsafe products. And, finally, they have a right to adequate and fair compensation if they are harmed by a dangerous product.

I had a press conference in California with women who were harmed by silicone gel breast implants, and women who are called DES daughters. DES is a drug that was given to their mothers to help them sleep during pregnancy, which wound up giving them terrible, terrible problems and pain and suffering. The DES daughters and the silicone breast implant victims are lobbying against this bill.

What is their special interest? They have none. They are just sounding a warning cry to future victims if we pass this bill. This bill would prevent juries from imposing deterrents to future sale of defective products.

Mr. ROCKEFELLER. Will the Senator yield?

Mrs. BOXER. Yes, I will be happy to yield.

Mr. ROCKEFELLER. Is the Senator aware in this bill about DES?

Mrs. BOXER. DES.

Mr. ROCKEFELLER. We had that discussion, the Senator and I did, yesterday.

Mrs. BOXER. The Senator said DES was not approved by the FDA, did the Senator not?

Mr. ROCKEFELLER. By the modern FDA.

Mrs. BOXER. It was approved by the former FDA.

Mr. ROCKEFELLER. But not by the one by which the law was formerly interpreted.

Mrs. BOXER. The FDA——

Mr. ROCKEFELLER. If the Senator will yield? What the Senator fails to understand is that if this law before the Senate had been in effect at the time that, for example, Representative PATSY MINK went through her horrible circumstances, that in fact she would have had the recourse to sue that she does not have under the present law. Because under the present law in some cases the statute of limitations runs out in 2 years after time of injury. She did not know something was wrong for quite a while.

Very specifically, in our bill, it is explicitly laid out that if something happens 20 years later, 30 years later, 40 years later, the statute of limitations does not begin until a person knows, first, that they have been hurt; and, second, why they have been hurt—what is the cause, why they have been hurt. It is at that point that the statute of limitations begins to run. So that Representative PATSY MINK could have indeed gone, even today, had this bill been in effect back then.

Mrs. BOXER. Mr. President, if I might say to the Senator, Representative MINK is opposed to this bill and so are the DES daughters. They think this bill is a terrible bill. They think this bill is a step backward. There are many other parts of the bill, as my friend knows because he is so involved in it, that do not deal with the statute of limitations but that deal with capping damages.

I say to my friend again, it is very nice to hear that the Senator from West Virginia feels that the bill would be good for victims of DES, but the victims of DES oppose this bill. The victims of breast implants oppose this bill. Women's groups oppose this bill. So they do not see it the way the Senator from West Virginia sees this bill.

Mr. ROCKEFELLER. I did not try to explain that they did see it the way the Senator from West Virginia sees it. What I was suggesting is that they do not know that in this bill, they are not eliminated by the statute of limitations. The statute of limitations changes entirely. Whether or not they know it, that is the fact. That is just something I want those who are listening to understand.

It is the same thing as last year, when we had the FDA in and the consumer groups that the good Senator refers to. They were constantly saying, ''Well, that would mean that if you had a problem with the Dalkon shield or breast implants, you did not have a cause of action.'' All of which was totally an untruth, but it was said—megaphoned and megaphoned so loudly—that because they had never been approved by the FDA, therefore, they will have no defense whatsoever.

Mrs. BOXER. I say to my friend, maybe he misunderstood. What the groups were saying is that this is a bill about what happens in the future, and that a full one-half of the FDA-approved pharmaceuticals are recalled.

Mr. ROCKEFELLER. On this bill——

Mrs. BOXER. My friend raised the issue. It was in the bill last year and, as he knows, it is in the House bill. The FDA excuse is in the bill. That was passed the House. And if this bill passes—I know the Senator is working toward that end and I am working toward an opposite end—but if the bill does pass, and it has a chance of passing, it will go to conference and I hope my friend will in fact oppose it if the FDA excuse is in it.

The point is the Senator from West Virginia raised the issue of the FDA excuse and said that the groups did not really understand what we were doing when they mentioned silicone breast implants. The fact is, the silicone breast implants were grandfathered into an approval process, No. 1. But even if that is not as clear as a sure FDA approval, what the groups were trying to say—and they have no ax to grind, in my view, these are people who consumed, these are people who are victims of these terrible drugs, whether it is DES or silicone breast implants or the Dalkon Shield is one thing. Whether or not they were approved by the FDA, what they were talking about last year was the fact that since half of the drugs that are approved by the FDA are recalled, that FDA approval does not necessarily carry with it total and complete safety.

And in this bill, what you did not do last year, you capped punitive damages, and many women who understand this bill understand that women are going to be penalized because, if it is a choice between $250,000 or three times economic damages, women still in our society earn 71 cents for every dollar earned by men. Many do not work, many more do not work, and their economic damage of lost wages, et cetera, will be lower.

So I think that the Senator has every right to support this bill. I admire him and respect him for his belief in this bill. But when the Senator gets up and says PATSY MINK would have been better off, I think an average listener would have assumed that Congresswoman PATSY MINK, who had a DES daughter, would support this bill. She not only opposes it, she opposes this bill with passion.

Mr. ROCKEFELLER. I understand that very well. I simply was responding to the point that the Senator made about the DES. And the point is that had this bill been in effect at the time

that PATSY MINK went through her terrible situation, she would have been in an entirely different circumstance. I wanted the Senator to know that.

When the Senator mentions that women are hurt by this bill, women in America now have long been deprived. If the Senator wishes to further yield—

Mrs. BOXER. I am happy to yield. I wanted to make a point. Since the Senator brought up Congresswoman MINK, her daughter was harmed by a defective product. I am not sure, but I believe her daughter did recover some damages.

Mr. ROCKEFELLER. Good.

Mrs. BOXER. I am happy to continue to yield to my friend.

Mr. ROCKEFELLER. I thank the Senator very much.

Understand that this bill would not in any way protect anybody who makes a product, the Dalkon shield or any harmful product, such as silicone breast implants. The Senator does understand that?

Mrs. BOXER. No, I do not, because my friend under this bill is capping their punitive damages. Current law is much tougher on the people who make these products. This bill would cap punitive damages. So, therefore, it is a great step back. That is why the big business community supports his bill and consumers oppose it, because whereas each State would decide, there would be a cap on punitive damages. By the way, in California, we have no cap on punitive damages. We have other caps in place, but there is no cap on punitives. My people in California who would be victims of a future Dalkon shield would suffer under this bill.

Mr. ROCKEFELLER. I am trying to give a different point of view, that the Dalkon shield and breast implants are not covered because they are not approved by the FDA and besides the FDA defense from last year's bill is not even a part of this bill.

It is interesting. The New England Journal of Medicine indicated that women, and particularly women, I believe, who are pregnant, are now being excluded from clinical studies of different pharmaceuticals. That is not helpful for women. Benedictine is a morning sickness drug that in fact was approved and is used all over the world, and is not used in this country because they felt that they were unable to withstand litigation and potential charges. So there must be millions of women who do not have the advantage of that particular drug, which is approved everywhere else in the world.

Mrs. BOXER. If I could say to my friend, since I am yielding, and I think it is best we have a dialog on each point with respect to thalidomide, which was a drug made in England. My friend and I are from the same generation. We remember the tragedy of babies born without limbs and brains, and the rest of it. The FDA did not approve that drug here. And maybe our product liability laws kept that company out of America.

I want to say, in behalf of the women, at least from the State that I represent, they do not want any more Dalkon shields and they do not want thalidomide and they do not want unsafe products and silicone breast implants. That is just what they are going to get if bills like this go forward, because you are protecting companies in this bill and, therefore, they will be less vigilant. And that is why of consumer group in this Nation opposes this bill.

Mr. ROCKEFELLER. I say to the Senator further that where she refers to big business, about 30 percent of the businesses in this country are run by women, owned or run by women. The great majority of them are in fact small businesses. The guess is that by the end of this century, about 40 percent of all small businesses in this country will be run by women. Of course, it is the small businesses who are the least able to take on the risk of litigation and often withdraw products rather than subject themselves to that because they could be thrown out of business because maybe of a jury decision.

Julie Nimitz, obviously a woman, in Senate testimony—she runs a sporting goods company and is the chief executive officer of it, in fact.

She is one of the two CEO's who run a U.S. manufacturer of football helmets, and she said, ''Our employees hold their breath every time a case goes to the jury because a runaway award would mean the end of the company.''

Norma Wallace, who is head of an engineering company, said that the current situation with litigation—and evidently her company is in the machine tool industry—is made a great deal less competitive by the product liability system.

So the question of will women be helped or will women be hurt, I think, is not quite as easy as my friend indicates.

Mrs. BOXER. If I could respond to my friend.

Mr. ROCKEFELLER. Please.

Mrs. BOXER. It is not small businesses that brought these drugs to the market. My friend knows that. These drugs are developed over years. Millions of dollars go into these drugs, and they are sent to the marketplace. The fact that we——

Mr. ROCKEFELLER. I was not——

Mrs. BOXER. Excuse me. I believe that I am making a point here. I raised the issue of women, not women who own businesses or women who work for business. I raised the issue of women as consumers.

What I am saying to my friend is I believe I speak for the vast majority of women who would say to my friend today if they had the opportunity—and I am standing in here for some of them—please do not make it easier to push on us silicone breast implants. Please do not make it easier to push on us the Dalkon shield. Please do not make it easy for us to get thalidomide. Please do not change the legal system in such a way that we are no longer protected by the best system in the world.

Everybody always says this is the greatest country in the world. I have heard my friend say it. We have the best marketplace in the world, even though we do recall 50 percent of the drugs the FDA approves. We are the envy of the world.

I would say to my friends in small business—and my friend is right, small business is the engine of this economy—we are talking about this very narrow bill that focuses on basically product liability and mostly on punitive damages caps, that in a study, there were 355 punitive damage awards in 25 years. And was it last year there were 11—excuse me. I stand corrected. The last year of the study was 1990. There were an average of 11 cases per year. So my friends who are in small business, when it comes to punitive damage awards, they should know that there have been 300 plus in 25 years. So when I talk about the women of this country, I am talking about them as, frankly, people who have been victimized by dangerous products.

It is hard to know what it is worth if your mate is sterile and you cannot have a child. I am going to be a grandmother. It is one of the most exciting things that has ever happened to me. My friend is a proud dad. If I did not have that opportunity—and many DES daughters never had that opportunity—what kind of cap could I put on that? How can I tell you what it is worth? If I was to ask my friend what are his children worth, I do not think he could even measure it. But we are saying right now to future victims of products which might make them sterile, male or female, $250,000 or three times economic damages; that is all it is worth. And I do not believe in many cases that will punish these huge businesses and corporations that can write off $250,000 as easily as most Americans can write off a dollar or 10 cents.

Mr. ROCKEFELLER. Let me say to my friend from California, if she has time to engage in this, let me just go on further on this business of women and the effect on them.

Phyllis Greenberger is the executive director of the Society for Advancement of Women's Health Research, and she has said this year, ''The current liability climate is preventing women from receiving the full benefits that science and medicine provide. There is evidence,'' she says, ''that maintaining the current liability system harms the advancement of women's health research.''

I would point out to my good friend from California, with whom I agree on 95 percent of matters, 98 percent perhaps, under the current product liability system there is only one major

pharmaceutical company still investing in contraceptive research. So whether it is Benedictine for morning sickness or it is contraceptives or whatever, it is not the fact that there have only been *x* number of punitive damages awarded. It is the fact that punitive damages are always out there and that they have the effect of deterring people.

In fact, we have come to the point where I think 47 percent of business—no. I forget the exact number. It was a big percentage of businesses have indicated that when they want to improve a product that they already have, they often reject the chance to improve the product for fear that it will indicate their previous product was somehow deficient, which is just not the way things work in America. So it is not the number just of punitive damage awards. It is the chilling effect of the possibility of what could happen. It is, in fact, cutting off enormous amounts of research which affect women's health, all of which is basically what I am trying to say to my good friend.

Mrs. BOXER. Let me say to my friend I come from a State that has one of the largest pharmaceutical fields in the whole country. It is very robust. It is very exciting. And I say to my friend, I wish he would come with me. There is one company called Shaman Pharmaceutical. Shaman is sort of a doctor in the rain forest. And Shaman Pharmaceutical was founded by a young woman who said there are many of these products among the flora and fauna that hold promise. So the current liability laws did not stop Lisa Contey, who is the CEO of that company, from starting a new company from scratch, from building it up to the point where she has three products before the FDA.

What I am saying to my friend is I think the people who support this bill because they say there is a crisis are making up a crisis. There are many new drugs on the market. We want to work with the FDA to get swifter approval in some cases, and we will. But I say to my friend be very, very cautious. We are the envy of the world. I do not want to rush to get a new contraceptive that might hurt and maim and destroy people. You do not either, I say to my friend. So why mess with a law that has protected us? If we did not have laws like this, we might have gotten thalidomide on the market. If we did not have laws like this, we might have gotten many more dangerous drugs that you read about in other countries that are not as careful.

So I say that if, in fact, there is only one company doing this research and they are being careful and they are testing carefully and we do not have to—how many more times do women have to be used as guinea pigs in this country? It is not once that it has happened. It has happened with contraceptives continually. And maybe these companies will start making contraceptives for men. Maybe they will be a little more careful because, contrary to my colleague's remarks, it happens to be that these large pharmaceuticals are mostly dominated by men.

That is a fact of life. But I say that the laws we have in place are part of the patchwork approach to safe products, and I feel very differently than does he. I am not that concerned that there are not seven new contraceptives coming on the marketplace because, frankly, I would rather that they come slowly and that they be safe than that we expose women to the torture of some of these DES daughters. The one I met at my press conference, I tell you, it will haunt me for the rest of my life. She went through menopause in her twenties, and she has struggled ever since with the most life-threatening diseases because of DES.

So I do not want to have a law passed that will say to everyone out there, ''Come on. Bring your products onto market, because you can be taken to court but you're pretty well protected with a cap on punitive damages.''

I think it is a big mistake to do it. And I say that in behalf of, frankly, tens and tens of groups who really oppose this bill, many women's groups and consumer groups who represent both men and women.

Mr. ROCKEFELLER. I would just conclude, because my friend from Wisconsin has been more than patient in waiting to speak, by just saying two things.

No. 1 is, I ask unanimous consent to have a letter from the American Small Business Leaders on Product Liability Reform printed in the RECORD.

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

JOINT LETTER TO MEMBERS OF CONGRESS FROM AMERICAN SMALL BUSINESS LEADERS ON PRODUCT LIABILITY REFORM—APRIL 3, 1995.

DEAR MEMBERS OF CONGRESS: On behalf of the nation's more than 21 million small and growing businesses, we are writing to strongly urge your support of S. 565, The Product Liability Fairness Act of 1995.

You know the problem: A single lawsuit can and has put many small business owners out of business.

For many small businesses, the explosion in product liability cases means it is simply impossible to find and keep affordable liability insurance.

You've heard the horror stories. (If you haven't, give us a call.)

Why should you care? Small business create virtually all the net new jobs in the economy. And businesses owned by women now employ more people than the entire Fortune 500 combined. While most of our company names are not household words, small business comprises the backbone of the nation's economy—from Main Street to Wall Street.

We need your help!

Product liability reform was the #1 issue at the White House Conference on Small Business in 1986. Finally, after more than a decade of struggle, product liability reform seems within our reach.

Please support of S. 565. The Product Liability Fairness Act of 1995, and help protect U.S. consumers, workers and small businesses. Our future, and the future of our nation's economy, depends on it.

Thank you for your support.

Gary Kushner, President, Kushner & Company, Inc., President, National Small Business United, Kalamazoo, Michigan; Carol Ann Schneider; President, Seek, Inc., President, Independent Business Association of Wisconsin; Patty DeDominic, President, National Association of Women Business Owners (NAWBO), Los Angeles, California; Willis T. White, President, California Black Chamber of Commerce, Burlingame, California; Thomas Gearing, President, The Patriot Company, Federal Reserve Board, Small Business Advisory Committee, Milwaukee, Wisconsin; Margaret M. Morris, NAWBO Chapter President, Chevy Chase, Maryland; Lewis G. Kranick, Chairman of the Board, Krandex Corporation, Wisconsin Delegation Chair—1986, White House Conference on Small Business, Milwaukee, Wisconsin; Linda Pinson, Principal, Out of Your Mind, and Into the Marketplace, NAWBO Financial Services Council, Tustin, California; Dale O. Anderson, President, Greater North Dakota Association, Bismark, North Dakota; Chellie Campbell, President, Cameren Diversified Management, Inc., NAWBO Public Policy Council, Pacific Palisades, California; Brooke Miller, NAWBO Chapter President, St. Louis, Missouri, John F. Robinson, President & C.E.O., National Minority Business Council, Inc., New York, New York; Lucille Treganowan, President, Transmissions by Lucille, Inc., NAWBO Chapter President, Pittsburgh, Pennsylvania; Wanda Gozdz, President, W. Gozdz Enterprises, Inc., NAWBO Public Policy Council, Plantation, Florida.

Frank A. Buethe, Manager, Advance Business Development Center, Green Bay Chamber of Commerce, Green Bay, Wisconsin; Rachel A. Owens, Family Business Specialist, Mass Mutual, NAWBO Chapter President, Irvine, California; Brenda Dandy, Vice President, Marine Enterprises International, Inc., NAWBO Financial Services Council, Baltimore, Maryland; Terry E. Tullo, Executive Director, National Business Association, Dallas, Texas; Tana S. Davis, Owner, Tana Davis C.P.A., NAWBO Chapter President, Encino, California; Mary G. Zahn, President, M.G. Zahn & Associates, NAWBO Public Policy Council, Philadelphia, Pennsylvania; Gary Woodbury, President, Small Business Association of Michigan; Hector M. Hyacinthe, President, Packard Frank Organization Inc., New York Delegation Chair—1986, White House Conference on Small Business, Ardsley, New York; Mary Ellen Mitchell, Executive Director, Independent Business Association of Wisconsin, NSBU Council of Regional Executives, Madison, Wisconsin; Susan J. Winer, President, Stratenomics, Illinois Delegation Chair—1986, White House Conference on Small Business, Chicago, Illinois; Lucy R. Benham, Vice President, Keywelland Rosenfeld, P.C., NAWBO Public Policy Council, Troy, Michigan; Beverly J. Creamer, Chief Executive Officer, I & S Packaging, NAWBO Chapter President, Kansas City, Missouri; C. Virginia Kirkpatrick, President/Owner, CVK Personnel Management & Training Specialists, NAWBO Financial Services Council, St. Louis, Missouri; Mary Ann Ellis, President, American Speedy Printing, NAWBO Chapter President,

Boynton Beach, Florida; Shaw Mudge, Jr., Vice President, Operations, Shaw Mudge & Company, Connecticut Delegation Chair—1986, White House Conference on Small Business, Stamford, Connecticut; Eunice M. Conn, Executive Director, Small Business United of Illinois, NSBU Council of Regional Executives, Niles, Illinois; Ronald B. Cohen, President, Cohen & Company, Immediate Past President, NSBU, Cleveland, Ohio; Hilda Heglund, Executive Director, Council of Small Business Executives, Metropolitan Milwaukee Association of Commerce, Milwaukee, Wisconsin; Karin L. Kane, Owner/Operator, Domino's Pizza, NAWBO Chapter President, Salt Lake City, Utah; Suzanne F. Taylor, President & Owner, S.T.A. Southern California, Inc., Vice President—Public Policy Council, NAWBO, South Laguna, California.

Suzanne Pease, Owner, Ampersand Graphics, NAWBO Chapter President, Morganville, New Jersey; Mary Jane Rebick, Co-Owner, Executive Vice President, Copy Systems, NAWBO Public Policy Council, Little Rock, Arkansas; Arlene Weis, President, Heart to Home Inc., NAWBO Public Policy Council, Great Neck, New York; Deepay Mukerjee, President, R.F. Technologies, 1995 Delegate, White House Conference on Small Business, Lewiston, Maine; David Sahagun, Dealer, Castro Street Chevron, 1995 Delegate, White House Conference on Small Business, San Francisco, California; Dona Penn, Owner, Gigantic Cleaners, NAWBO Public Policy Council, Aurora, Colorado; Barbara Baranowski, Owner, Condo Getaways, NAWBO Chapter President, North Monmouth, New Jersey; Sheelah R. Yawitz, President, Missouri Merchants and Manufacturers Association, Chesterfield, Missouri; David R. Pinkus, Executive Director, Small Business United of Texas, Texas Delegation Chair—1986, White House Conference on Small Business, Austin, Texas; David P. Asbridge, Partner, Sunrise Construction, Inc., 1995 Delegate, White House Conference on Small Business, Rapid City, South Dakota; Marj Flemming, Owner, Expeditions in Leadership, 1995 Delegate, White House Conference on Small Business, Signal Mountain, Tennessee; Jo Lee Lutnes, Owner, Studio 7 Public Relations, 1995 Delegate, White House Conference on Small Business, Columbus, Nebraska; Margaret Lescrenier, Vice President, Gammex RMI, Small Business Committee Member, Wisconsin Manufacturers and Commerce; Gordon Thomsen, Chief Executive Officer, Trail King Industries, Inc., 1994 Small Business Administration National Exporter of the Year, Mitchell, South Dakota; Leri Slonneger, NAWBO Chapter President, Washington, Illinois; Shalmerdean A. Knuths, Co-Owner/Director of Administration, Rosco Manufacturing Company, 1995 Delegate, White House Conference on Small Business, Madison, South Dakota; Allan M. Shaivitz, President, Allan Shaivitz Associates, Inc., 1995 Delegate, White House Conference on Small Business, Baltimore, Maryland; Linda Butts, President/Owner, Prairie Restaurant & Bakery, Member, NFIB, Carrington, North Dakota; Malcolm N. Outlaw, Owner/President, Sunwest Mud Company, Board Member, Small Business United of Texas, Midland, Texas; Suzanne Martin, Council of Small Enterprises, Greater Cleveland Growth Association, NSBU Council of Regional Executives, Cleveland, Ohio.

David L. Condra, President, Dalcon Computer Systems, 1995 Delegate, White House Conference on Small Business, Nashville, Tennessee; Doris Morgan, Vice President, Cherrybark, 1995 Delegate, White House Conference on Small Business, Hazlehurst, Mississippi; Dr. Earl H. Hess, Lancaster Laboratories, Inc., Pennsylvania Delegation Chair—1986, White House Conference on Small Business, Lancaster, Pennsylvania; Ralph S. Goldin, President, Goldin & Stafford, Inc., 1995 Delegate, White House Conference on Small Business; Landover, Maryland; John C. Rennie, President, Pacer Systems, Inc., Past President, NSBU, Billerica, Massachusetts; Murray A. Gerber, President, Prototype & Plastic Mold Company, Inc., Connecticut Delegation Chair—1986, White House Conference on Small Business, Middletown, Connecticut; Robert E. Greene, Chairman & CEO, Network Recruiters, Inc., 1995 Delegate, White House Conference on Small Business, Bel Air, Maryland; Julie M. Scofield, Executive Director, Smaller Business Association of New England, Waltham, Massachusetts; Jack Kavaney, President, Gateway Properties, 1995 Delegate, White House Conference on Small Business, Bismarck, North Dakota; Leo R. McDonough, President, Pennsylvania Small Business United, Pittsburgh, Pennsylvania; H. Victoria Nelson, Proprietor, Jamel Iron & Forge, 1995 Delegate, White House Conference on Small Business, Hagerstown, Maryland; Helen Selinger, President, Sloan Products Company, Inc., 1995 Delegate, White House Conference on Small Business, Matawan, New Jersey; Charles B. Holder, President, Hol-Mac Corporation, 1995 Delegate, White House Conference on Small Business, Bay Springs, Mississippi; Marguerite Tebbets, President, Window Pretties, Inc., President, Women Business Development Center, Kennebunk, Maine; Catherine Pawelek, NAWBO Chapter President, Coral Gables, Florida; Max Gonzenbach, Vice President, Valley Queen Cheese Factory, Inc., 1995 Delegate, White House Conference on Small Business, Milbank, South Dakota; Geoff Titherington, Owner, Bonanza, American Franchisees Association, Sanford, Maine; Richard Watson, Executive Vice President, Walker Machine Products, Inc., National Screw Machine Products Association, Collierville, Tennessee; Tonya G. Jones, President, Mark IV Enterprises, Inc., NFIB Guardian Advisory Council, 1995 Delegate, White House Conference on Small Business, Nashville, Tennessee.

Mr. ROCKEFELLER. Mr. President, this is a letter from Patty DeDominic, who is the president of the National Association of Women Business Owners, and others, in which they write: ''On behalf of the Nation's more than 21 million small and growing businesses,'' we ask you to support this bill.

This is just not the idea, therefore, that this is all big business. I mean that really is not the case.

Second, and finally, and with great respect to my friend from California, who cares passionately that people be protected, as do I. I think the Senator knows my heart as well as the Senator's, not as well as the Senator knows her own heart, but she knows what I stand for and who I am.

But I think the statement is fine, which is one company which is doing research on contraceptives, or if you put that over into other areas such as Alzheimer's.

I had dinner last night with a person who has Parkinson's. He was describing to me a little bit of what that was like. That happened to be a man and not a woman. But I really never, ever want, as in the Soviet Union, where there is one company which is doing research on Alzheimer's and Parkinson's and some of these enormous diseases that affect men and women. I mean, the whole point is competition in the marketplace. And even worse is the fact that companies are withdrawing the amount of money that they spend on research in general.

Mrs. BOXER. I say to my friend, what I said—because I do not want to be mischaracterized—is that it is fine that unproven drugs are not being pushed on the marketplace because in many cases if unproven drugs are pushed on the marketplace they will kill people.

Mr. ROCKEFELLER. They certainly will.

Mrs. BOXER. They will maim people. They will hurt people. And nowhere could this be more true than when it comes to contraceptives or drugs given during pregnancy and the like. And women have been used as guinea pigs.

So when my friend says, in terms of contraceptives, that he is very worried that it is this legal system that is stopping these drugs, I say better that we go slowly, better that we move wisely, better err that we test these products and not have another case of the Dalkon Shield or the DES. We do not need these.

We learned a lesson and the lesson should not be that you open up the floodgates by protecting companies. The lesson should be that we should be very, very cautious.

Mr. ROCKEFELLER. And the lesson should also be that we open up the floodgates of the courthouse door to people who might be afflicted by anything that might happen in the future.

Mrs. BOXER. I think the courthouse door is fine right now. I mean, on the one hand——

Mr. ROCKEFELLER. Are you satisfied with the system the way it is?

Mrs. BOXER. With product liability; I think it is fair to say that we do not have the problem with product liability. If you want to talk about other areas of the law where there is frivolous lawsuits, that is fine.

But when I see that there were an average of 11 punitive damages awards for products cases in a single year, nationally, I do not think we have an explosion.

And then my friend says let us open up the courthouse door, on the one

hand, when many on his side say already the courthouse door is too wide open.

I just want to say to my friend when it comes to Alzheimer's, I am very interested, and his heart is there. We know that a new drug was put on the market last summer. We also know for Parkinson's there is a new operation that holds some promise. We are making progress.

I do not think we need to take a system that has acted as a protector of the American consumer and destroy it, as this bill would.

Now this bill only goes halfway to destroy it. The one in the House, that some of my friends here on the Republican side of the aisle like, goes to the heart of it, goes to the heart of it. They just want to get this bill in conference and go all the way with this bill if they can do it, and keep the votes together. I think we are playing a very dangerous game here.

Mr. ROCKEFELLER. Final question, with apologies to both the Senator from California and the Senator from Wisconsin.

Mrs. BOXER. The Senator does not have to apologize, I say to my friend. I enjoy this give and take.

Mr. ROCKEFELLER. Sure.

The Senator appeared to be saying that she is, Mr. President, entirely satisfied with our present system. I believe she did say that.

Mrs. BOXER. I said, on product liability, I think that we have a good system.

Mr. ROCKEFELLER. The status quo on product liability is absolutely fine and there does not need to be any changes made. I mean, most trial lawyers will not say that.

So what I was going to ask my friend from California, if there was a bill that was able to balance the requirements of getting more opportunities for research and discoveries, more opportunities for new drugs, and balance the needs of business in that respect and also the question of how business is treated so business, even though there were only 11 punitive damage cases in one particular year, that, in fact, the chilling effect of those 11 cases hangs over hundreds of thousands of businesses and, therefore, affects, in effect, hundreds of thousands of businesses and, on the other hand, was able to protect consumers and open up new avenues of protection for consumers, if it were possible to develop such a bill, would the Senator be interested?

Mrs. BOXER. I will work with my friend to make sure that we can encourage the best and the brightest people in this country to work on research. That is why I am such a proponent of NIH grants. Because, as my friend knows, right now we are only approving one in five grants. We are only funding one in five approved NIH grants.

I will work with my friend if he can show me part of the law that he thinks is hurting the people of this country. I am just saying to my friend that we have, with all of its faults and all of its problems, the safest products in the world. And I am saying to my friend, even though we have had our share of problems, we are still the safest.

Why would we go back from that? I think that is where my friend and I disagree. He does not seem to think that the current law has protected people. I mean, my friend has stated here and to me in other settings that he thinks his bill is good for future victims.

Mr. ROCKEFELLER. This Senator thinks that the bill before us offers a number of areas which would make it substantially a more protected situation, a more have-your-chance-at-the-courthouse situation, have access to alternative dispute resolutions on a voluntary basis where the claimant never has to pay anything but the defendant does.

I think there are a number of areas where this bill does, in fact, open up new opportunities for protection and due process to women.

This will be my fourth attempt to close, and I am picking on myself, not the distinguished Senator from California.

There is one more thing that I notice here. Again, the New England Journal of Medicine, 1993, concluded that the manufacturers' liability concerns are contributing to the exclusion of women, which I indicated earlier, from clinical studies.

Now, that is a terribly serious statement. That is the same thing as I ran into in the Persian Gulf war syndrome with the use of the drug pyridostigmine, which when used in connection with other chemicals may be a contributing factor to the tens of thousands of men and women in this country who have a so-called mystery illness, which is no mystery to me but which evidently seems to be to our scientists.

And women in the test that the Department of the Defense conducted to test this pill were entirely excluded. Not one single woman, even though the bodyweight of women obviously is not as great as that of the average man and, therefore, the effect of the pill, which was made on men and women, would be much worse on women. So the importance of having women in clinical studies in this research is very, very important.

Having said that, for my part I want to thank my friend from California, and apologize to my friend from Wisconsin and yield the floor.

Mrs. BOXER. Thank you very much.

Mr. President, I am very pleased that the Senator from West Virginia and I were able to engage in this dialog. I think today people have to know that when there is disagreement among friends, you still talk to each other. We do that too seldom, even on the floor of the Senate. ''No, I won't yield. I want to say my piece. I don't agree with you and I won't yield.''

I think the fact that we can go back and forth—and we are really in disagreement on this bill, there is no question about that—is a good thing.

I say to my friend that I know he is doing what he is doing because he thinks it is best for everyone. But I think at some point one has to take a look at who opposes you and listen to the groups that oppose your bill, and to stand on the floor and say, ''I'm doing it for DES people, I'm doing it for consumers, I'm doing it for women,'' how about giving these people the credit to know themselves whether this bill is good for them?

I told a story about this Boy Scout who saw this little old lady and went over to her and took her across the street. And he wondered why she did not say thank you. Finally, he said, ''Why didn't you say thank you to me?''

She said, ''Because I didn't want to go across the street.''

Why are we taking the consumers across the street? They do not want to go. Why are we telling the women in this country to go across this street? They do not want to go. I understand why one would support this bill. There are some big businesses that desperately want this bill. The tobacco companies want this bill. They do not like the threat of large punitive damages. Why would they? They would just as soon put a product on the market, take the risk and know they are protected.

I am talking for consumers, I am talking for women, and I am not making it up. I am going to read you the list, and it may take a while. I am not going to read the whole list:

Action on Smoking and Health opposes liability reform. AIDS Action Council opposes it. Alabama Citizen Action opposes it.

Here are others in opposition: The American Bar Association; American Coalition for Abuse Awareness; American Council on Consumer Awareness; American Public Health Association; American University Washington College of Law; Americans for Nonsmokers Rights; Arizona Citizen Action; Arizona Consumers Council; Aviation Consumer Action Project; California Citizen Action; California Public Interest Research Group.

This is an unprecedented group of people across the political spectrum, in my opinion.

The American Bar Association has lawyers on both sides of this; Center for the Public Interest Law at the University of San Diego; Center for Public Representation, Inc.; Center for Women Policy Studies; Children Now; Citizen Action; Citizen Action of Maryland and New York; Citizen Advocacy Center; Citizens Action Coalition of Indiana; Clean Water Action Projects; Coalition for Consumer Rights; Coalition of Labor Union Women; Colorado Public Interest Research; Communications Workers of America; Connecticut Citizen Action Group; Connecticut Public

Interest Research Group; Consumer Action; Consumer Federation of America.

All these groups oppose liability reform, and people will get up and say this bill is good for the consumers, and people will get up and say it is good for women, and people will get up and say it is good for victims. Well, that is the best kept secret in America because here are the groups that oppose it:

Consumer Federation of California; Consumer Protection Association; Consumers for Civil Justice; Consumer League of New Jersey; Consumers Union.

It goes on: DES Action USA. We heard the Senator from West Virginia get up and say he thought it would be better for DES people if this bill was law. Interesting. DES Action USA opposes the bill. So do DES Sons. So they do not want this bill to become law.

Empire State Consumers Association; Families Advocating Injury Reduction; Fair Housing Council of San Gabriel Valley; Federation of Organization for Professional Women oppose.

My friend talked about how women want this. Well, there is no such thing. Some women, I guess, who are in business want it and some do not.

Georgia Citizen Action; Fund for Feminist Majority.

It goes on.

Hollywood Women's Political Committee; Idaho Citizens Action Network; Idaho Consumer Affairs; Illinois Council Against Handgun Violence; Illinois Public Action; International Brotherhood of Teamsters; Iowa Citizen Action Network; Kentucky Citizen Action; Latino Civil Rights Task Force; Lambda Legal Defense and Education Fund. I am going to lose my voice. I might have to save this for a later debate.

I think I have made my point.

And I have not even told you all the prestigious, important, decent organizations that do not want this bill to pass. This is America. They do not want this bill to pass.

National Organization on Disability; the National Rainbow Coalition; the National Women's Health Network. They do not think liability reform is good for women.

Nebraska Citizen Action; New Hampshire Citizen Action; New Jersey Environmental Federation; New Mexico Citizen Action; North Carolina Consumers Council. It goes on. I am only on the O's.

Public Citizen; Uniformed Firefighters Association of Greater New York.

Mr. ROCKEFELLER. Will the Senator yield?

Mrs. BOXER. Yes, I will be happy to yield. I am getting tired.

Mr. ROCKEFELLER. When you go on to the R's, that would be an appropriate time to yield to me.

Mrs. BOXER. Go ahead. I yield to you now.

Mr. ROCKEFELLER. I noticed that the Senator mentioned one AIDS interested group. That compels me to say something which, again, I think is so important, that one of the reasons that the list is so long is people on a subject like this, and when you have a very intense group fighting so hard—the Senator mentioned lawyers in general—but there is a particular group of lawyers that is fighting this thing very, very hard, a tremendous amount of sensationalism.

I have a letter which is being passed around West Virginia written by one of these particular kinds of lawyers basically saying that if you have been exposed to asbestos, ROCKEFELLER is trying to cut off your chance for recourse, which is an absolute falsehood because this bill is entirely prospective and asbestos does not enter into it at all.

What I am suggesting is that many, in fact, amazingly, many of these consumer groups are so completely wedded to the status quo that they do not want to see any change.

I can remember—every year I do this. I ask the president of the American Trial Lawyers Association to come into my office, which they always do with one of their particular lobbyists. And I say, ''Is there anything I can do to work with you on this problem because I want to solve it in a way which is fair to both business and consumers.''

I come from a State where consumers far outnumber businesses, and I want to make sure it is a fair bill.

Every year the answer is, ''No, the bill is fine exactly the way it is. There is no need for any kind of change whatsoever. Which is a remarkable attitude when you consider, for example, what Abbott Laboratories said. Abbott Laboratories has made the decision to drop plans for human trials of the drug to prevent HIV-infected mothers from transmitting the AIDS virus to their unborn children. Abbott Laboratories is not a small operation. They are not doing that anymore.

Dr. Fauci, who is Director of AIDS research at the National Institutes of Health called these liability concerns ''very real,'' and ''something we have to address.'' This is the area of AIDS. A pharmaceutical company and a major Government research organization agree on the need to make some reforms in our product liability system.

All the junior Senator from West Virginia is trying to suggest to my friend from California is that somehow—here is another, Dr. Elizabeth Connell, Chair of FDA's obstetrics and gynecology devices panel, said that the United States is losing its leadership role in the area of contraceptive technology ''with potentially disastrous consequences for women and men in this country and elsewhere.''

All I am trying to say to my good friend from California is that I think one of the real problems on this piece of legislation, frankly, is that people really have not looked at the bill; that there is this atrocious mindset on the part of those who oppose it—I hope not on the part of those who propose it—that it is atrocious to bring it up. Often, in my State's legislature, somebody would bring up the beginning of an idea, an amoeba, and the lobbyist would crush it immediately before it had a chance to grow in any direction, so that it might in fact become something.

All I am saying is that opposing any change, praising the status quo, when such things as testing for AIDS passed from a mother to a child could no longer be carried out is beyond my understanding.

Mrs. BOXER. Mr. President, my friend should come to me about this situation, no drugs are being developed. The pharmaceutical industry is basically the fastest growing industry in California. I might tell my friend that the Pediatric AIDS Foundation is intimately involved in making sure that we do research on pediatric AIDS. I happen to know the doctor who actually made the finding that the AIDS virus passed through the mother's milk to the baby. The fact of the matter is, I do not see one reason that has been offered by any of my friends in the U.S. Senate on either side of the aisle that there is an explosion of lawsuits that is chilling this whole Nation.

I think that we have a system of justice in this country regarding product liability that is working. The truth is, with all of the talk about this great explosion of lawsuits, we heard all that and nobody put down one statistic about it. We finally got the statistic, and now they are coming up with another reason for the bill. Oh, it is a chilling effect. Yes, there are only 355 cases over 25 years, but it is a chilling effect. I say to my friends, if you want to see an explosion of litigation, it is in the business law area. That is where businesses are suing businesses and an explosion in litigation is taking place in that arena.

So there is no case to be made that there is this explosion of litigation. This is, in fact, an area of the law where the law serves as a deterrent from terrible, harmful products, be they drugs, medical devices, toys, or be they buses that explode. I am not a lawyer—which is a little refreshing around here—but I am not stupid when it comes to what is important for the rights of the people. I am not stupid when it comes to thinking about what it would mean if I did not have a baby because I was a DES daughter or I took a drug that was not carefully thought through. And then to say $250,000 capped for any horrible damage that was done to me, you know, if you lose your ability to bear a child, if that is your damage, you may be able to work. You may have very low economic damages. And if you can tell me that we know better in this U.S. Senate than they do in the States and on a jury in any and all cases what that punitive damage award can be, I say that is being ''Big Brother'' at its worst, and I might say ''Big Sister,'' depending on the gender of the Senator involved.

I am very concerned about this bill, very concerned about this bill. I have to say, I think it is an offense to the names of the groups that I read here to say that these people have somehow been hoodwinked—that was not my friend's word; I tried to write down what he said—riled up, made to believe that this is a bad bill when really it is a good bill for them.

I know some groups. You try to tell the Hollywood Women's Political Committee what is good for them and they will show you the door because they are going to figure out what is good for them. I have tried it on things on which they do not agree with me. They are not going to believe me in the American Trial Lawyers or the American Bar Association. They are going to look and they are going to decide. They have a very simple idea in their mind: They are going to oppose legislation that hurts people. That is what they believe. Do not blame it on the fact that they are so naive that they will follow the lawyers.

I do not know whether my friend knows it, but lawyers are not that well thought of these days. I happen to like lawyers. I am married to one. My father was one and my son is one. If you ask the average person, they are not going to follow lawyers, they are going to make up their own minds. If they agree with the lawyers, they will follow them. But to say some of these groups would follow blindly, I find that insulting on behalf of these groups. How about the YWCA, the Young Women's Christian Association? They oppose certain liability reform. I do not think they did it because they follow the lawyers.

In any event, there is going to be a lot more debate. I am going to close and again thank my friend for engaging me in this dialog.

I want to remind my colleagues of a few people: 14-year-old Shannon Fair, of Kentucky, in 1988, was in a school bus and it was hit by a drunk driver. No one was hurt by the collision itself, but the entire bus was engulfed in flames because the manufacturer decided against installing a metal safety cage for the fuel tank. Reckless frugality. Sixty-four children and four adults lost their lives. And we are going to cap, in this bill, the punishment to a company like that? We ought to be ashamed of ourselves.

Let us remember people like James Hoscheit of Minnesota, who at age 14 lost both of his arms when they were caught in a forage blower. If the piece of farm equipment had a simple safety guard, which cost the company $1, James Hoscheit would have his arms. And we are going to say, in our great wisdom, from Washington, DC, in the U.S. Senate, that we know better what kind of award James Hoscheit should get? I would rather leave that up to the people on the jury. Maybe they will find he should get $100,000. Maybe they will find he should get $200,000 or $1 million, because he lost both of his arms. I am not going to say what that should be. I think anyone who votes to do that is not fair to the future victims.

Don Taylor, Moreno Valley, CA, was driving his morning commute—and it could be any one of us—when another car cut him off. The Ford Bronco he was driving rolled three times and the roof caved in. The seat belts failed to retract. He was paralyzed from the shoulders down. Ford had notice of the defective seat belts, and he was still driving with the defective seat belt, and he is permanently paralyzed. Am I going to tell the jury from here what that is worth to him and his family? Not this Senator. I am going to fight against that.

Punitive damages are meant to punish and discourage flagrant or wanton conduct. And, as I said, punitive damages are awarded only rarely in product liability cases, and that is what we want. We want them used rarely—this is an important point, I say to my friends—because if they are used rarely, it means punitive damages are working because their very existence shapes up these companies, makes them think twice and three times and 10 times and 100 times before they put a potentially dangerous product into the hands of American consumers.

That is what we want. We want these punitive damages set on an individual basis, but we do not really want them at all. If everyone produces safe products, we will not have these awards. Why mess with a system that is deterring dangerous products?

You know, these caps they are talking about here are going to hurt women because they do not earn as much as men do. If you have a woman and a man and in the same bus and you have the exact same injury, but the man has a top-level job. You know, 95 percent of all of the top jobs in this country are held by men; it is just true.

It is just true. We women have a long way to go. We are getting there. However, it is slow.

If you have a woman and a man in the same bus, and they suffer the same injury, under this bill—under this bill—the man is going to receive more punitive damage awards because we will figure if he was not paralyzed, he would have earned so much more money, and he will be rewarded, and he will get a higher award. And the woman, who may not have been working at the time or worked at a lower job, will get less.

This is discriminatory on its face. Take the case of the Copper-7 IUD, intrauterine device. My friend and I talked a lot about these devices. The manufacturer knew for more than 10 years that their product could cause loss of fertility, serious infection, and the need to remove reproductive organs. The manufacturer continued to produce the Copper-7 IUD.

Now, the jury awarded one $7 million punitive damage award for this intentional misrepresentation of its birth control device. Under this bill, it would have been $250,000, or three times the plaintiff's economic damages. This is not a good bill.

I say to my friends, we should put a human face on this issue. We should remember the people who have suffered. However, they were able to go to court and be made whole because the law allowed that to happen. We should not jump in and preempt 50 States on this. We should allow the jury system to work.

I hope that after long debate—and I think we will have long debate on this; we already have had several days of debate—our colleagues will realize a couple of things. They will realize there is no explosion in this area of the law, no explosion of litigation. And they will realize that, by having a good, strong product liability law in all the various States that we have, that acts as a deterrent against unsafe products.

We have had our fill of the DES problem, of the silicone breast implant problem, of the Copper-7 IUD problem, of trucks and cars that explode. We should protect the people we were sent to represent, and we should not approve this bill. I yield the floor.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Wisconsin.

Mr. KOHL. I ask unanimous consent, and with permission from the Senators ROCKEFELLER and GORTON, I be allowed to speak as in morning business for a brief period.

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

SUPREME COURT DECISION STRIKES BIPARTISAN LAW

Mr. KOHL. Mr. President, I am quite disappointed and even puzzled today by the Supreme Court's decision in the United States versus Lopez case. Usually, the courts speak with one voice, but today the majority of the court spoke for several separate opinions.

By a slim 5 to 4 margin, the court struck down the bipartisan Gun-Free School Zones Act, a law that prohibits possession of firearms within 1,000 feet of a school.

In my judgment, this is a classic example of judicial activism, and it ignores the safety of our American children.

I will briefly say something about the facts that the court today ignored. Each day in our country more than 100,000 students bring guns into our schools. One-fifth of urban high school students have been threatened with firearms, and several hundred thousand schoolchildren are victims of violent crimes in or near their schools every year. Moreover, the problem of youth violence is rapidly escalating. In 1984, a total of 1,134 juveniles were arrested for murder; by 1993, that figure had more than doubled. According to the Justice Department, the vast majority

of these murders were committed with firearms and many with handguns.

Democrats and Republicans in Congress, together, tried to do something about this disturbing trend when we enacted the gun-free school zones legislation in 1990. Today, a slim majority of the court has shot Congress down, and in so doing, put America's children at greater risk.

Now, because we reenacted and perfected the Gun-Free School Act last year as part of the crime bill, the current law may still be constitutional. Indeed, we may yet be able to ensure the constitutionality of the law with a technical amendment, and I plan to introduce a bill to do that next week.

Broadly interpreted, however, the reasoning of the majority in this case could have far-reaching consequences that may undermine a variety of crucial Federal laws, like the Drug-Free School Zones Act on which the Gun-Free School Zones Act was based, or the bans on cop-killer bullets, or our Federal wetlands laws, and many of our civil rights statutes.

Mr. President, I agree with the strong dissent by Judge Souter, joined by Justices Ginsburg, Stevens, and Breyer, who labeled this ruling today by the Supreme Court a step backward.

I again want to express my disappointment with today's decision.

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. FEINGOLD. 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. FEINGOLD. Mr. President, I rise today to express my strong opposition to S. 565, the Product Liability Fairness Act of 1995. It is because I really see it as the worst of both worlds.

First, I think it is a bill that has been shown to have little, if any, demonstrated need; second, I think it will have drastic and undue effects on some of our most vulnerable citizens in this country.

Those who support this legislation have stated over and over that the bill is to everyone's benefit. It supposedly will benefit manufacturers, investors, business owners, workers, and consumers, they say.

Yet, I have still not heard of a single major U.S. consumer organization that has endorsed this legislation. The legislation is, in fact, opposed by virtually every group in the country representing working people, consumers, children, and the elderly.

The Product Liability Fairness Act says that it seeks to set uniform Federal standards for product liability legislation that would override certain existing State laws.

It is not really a bill that provides uniformity at all. Those State laws that are more protective of injured consumers are preempted under this bill while those State laws that go beyond what this bill would do in terms of shielding negligent manufacturers are left intact. They are left the same. It is not a bill that has anything to do, really, with uniformity.

In addition, Mr. President, it establishes a heightened—that is, more difficult—conscious and flagrant standard for the rewarding of punitive damages in product liability cases, and it would arbitrarily cap damage awards for punitive damages at $250,000, or three times economic damage.

Again, those State laws with higher caps or no caps are preempted. Those States with lower caps or no punitive damages awards are left completely untouched.

The bill would also set a 20-year statute of repose, unless, of course, a State law has a lower statute and is, therefore, left alone and also a 2-year statute of limitation.

Finally, Mr. President, this legislation would eliminate joint liability for noneconomic damages and create new standards for seller liability.

There are several reasons why I oppose this bill. Before I talk about the specific flaws of this legislation, I think it is important to note the larger context that the issue of product liability reform fits into. That is why, as I look at this whole bill, I oppose the whole approach. It is not a question of fixing this and fixing that. I think the whole concept driving this bill is an error and should be defeated.

For the past several months, all of us, Republicans and Democrats, have, of course, been trying to interpret the meaning of the November election. Many of our Republican colleagues have interpreted those elections as being a statement against big, inefficient and bureaucratic government. I disagree with a lot of the statements that have been made about what the November elections have been about. But I think that maybe is one legitimate interpretation of the elections, to say that people have had it with big government. And I think in many cases that is a legitimate complaint that our constituents have, and that they did express on November 8.

It would make no sense to argue that all Government programs should be run by Washington, DC, or that all Government programs should be run by the States. Some programs do address underlying problems that are national in scope, across State borders. But others are more local in nature and are best left to the local and State governments to determine how they can best address problems that they are more familiar with than are the folks that work in Washington, DC.

With regard to this matter I, for one, strongly believe that there are many issues that should clearly be left to the State and local governments to address. One of the reasons I opposed last year's crime bill was precisely because it shifted power away from our State and local courts and the law enforcement officials there, who have been dealing with crime problems in their own regions and are best equipped with the knowledge and creativity to solve those problems. So that is one reason why I opposed the crime bill, because I did not think we should have an overarching Federal Government controlling all aspects of that issue.

Many on the other side of the aisle have been among the strongest proponents for the so-called States' rights issue. Indeed, our distinguished majority leader has stated repeatedly this year his intention to dust off the 10th amendment and give greater control over local problems to the State governments. It was the Speaker of the other body who stated the following in his address to the Nation on April 7, about the intent of the congressional Republicans in the 104th Congress. He said:

> We must restore freedom by ending bureaucratic micromanagement here in Washington. This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters. We've got to return power back to you, to your families, your neighbors, your local and State governments.

Given those statements, how does this square with the legislation we are considering today? What happened to the need to address local problems on the local level? All this talk about States' rights is about to go right out the window, as we usurp over 200 years of State control over their tort systems. It seems a very odd trend indeed.

It should come as no surprise that this legislation is vehemently opposed by the American Bar Association, the National Conference of State Legislators, and the Conference of State Chief Justices. But those who support this legislation do not want to listen to State legislators or State judges or consumer organizations. They do not even want to listen to those individuals who have been tragically maimed or injured by the negligence of a small but powerful group of manufacturers.

Of course, those who support this legislation justify the bill by saying that such drastic action is needed to curb the so-called litigation explosion that has supposedly resulted in a court system totally bogged down in product liability litigation. Let us take a quick look at just how bogged down are our courts with product liability claims. The Department of Justice, using data compiled by the National Center for State Courts, recently released a study of 378,000 State tort cases which apparently represents about half of all tort suits completed between July 1991 and June 1992. According to the study, only 3 percent of all tort claims involve product liability, just 3 percent of all tort claims. The bulk of the tort claims

come in the form of automobile accidents and premises liability.

This study also found that in 1993 tort claims comprised only about 10 percent of all civil case filings. That means that the so-called massive usurping of State sovereignty because of a so-called explosion is occurring to address an area that represents less than 1 percent, actually less than a half a percent of all civil case filings. So, this is no panacea for our civil justice system.

Despite these statistics supporters continue to claim that our small business and manufacturing communities are suffocating under the burden of liability insurance and the constant threat of litigation. Yet just 2 years ago the National Association of Manufacturers—clearly one of the biggest backers of this legislation—announced their own results of a survey they had conducted of their own members in which they asked their members what specific issues were of concern to them and what problems in their minds pose the largest impediments to growth in the manufacturing industry. The results are very interesting and I think somewhat at variance with the claims of those who are so strongly supportive of this bill.

Somewhat incredibly, given the rhetoric, just 8 percent of the respondents listed product liability as a major problem in the manufacturing industry, only 8 percent. This is not a survey of the whole public. This is a survey of manufacturers. In fact, almost three times as many of the respondent manufacturers listed the Federal budget deficit as undermining the growth of the manufacturing sector.

So who is on the side of the manufacturers here? Those who support reforming the legal system, which less than 1 in 10 manufacturers listed as a major impediment to growth in investment? Or those of us who have consistently been out here voting for legislation that slashes Government spending and reduces the deficit, such as the President's 1993 budget bill that has cut our annual projected deficits by almost $100 billion.

I guess I am a little surprised at the eagerness of those on the other side to usurp the authority of the States to address a problem that has traditionally been a State issue. Unfortunately, though, I am no longer surprised at the continued pecking away at the provisions and principles contained in our Constitution. In this case I think this has something to do with some of the principles embodied in the Bill of Rights. I think it is astonishing the number of different efforts underway in this Congress that would dramatically alter the U.S. Constitution. Let us just start with the proposed constitutional amendments.

We had the balanced budget amendment, which was thankfully defeated in this body. We had a constitutional amendment being proposed for line-item veto authority. Soon we will apparently be considering term limit constitutional amendments, which in my view represent a profoundly undemocratic viewpoint, that we need to limit people's voting rights by telling the voters back home for whom they can and cannot vote.

There are other things this Congress apparently has in store for rewriting, redrafting, and in my view gutting the Bill of Rights. Constitutional amendments have been introduced on school prayer and flag desecration which, to my knowledge, would mark an unprecedented historical event by amending the first amendment. And in the Judiciary Committee recently, Mr. President—you sit on that committee as well—the Republicans have all but stated their intention to toss out the exclusionary rule, a key legal principle derived from the fourth amendment, on unlawful search and seizures. Perhaps we will soon be holding hearings in the Judiciary Committee on the eighth amendment and what may be obsolete principles, according to some, of excessive bail and cruel and unusual punishment.

In a sense I think this bill unfortunately turns us to another provision of the Bill of Rights, the seventh amendment. This product liability legislation in my view really, at least in principle, contradicts an important legal principle that has been the cornerstone of our judicial process for the last 200 years, and that is the right to trial by jury. True, there have been no proposals in the 104th Congress, at least not yet, to eliminate an individual's right to a jury trial. But I am concerned about it, especially after the senior Senator from West Virginia has described the efforts of some in this Congress to relegate the Constitution to the rare book room of the library.

But I think it is clear what a tremendous emphasis our Founders placed on the notion of allowing a panel of your peers to determine your fate, and that it is the jury, representative of the American people as a whole, that is best equipped to hear the facts of a case, filter out the truth, determine who is at fault in a case, and then finally determine the appropriate degree of punishment. That is a jury function in our common law tradition, not a judge function, traditionally, and certainly not the function of the Federal Government as embodied in the U.S. Congress in Washington.

I will speak in more detail about this at a later time but I view this measure as nothing more or less than an assault on the concept of trial by jury.

Mr. President, in addition this legislation is riddled with complications and contradiction. Let me discuss this cap on punitive damages for a moment. Under this legislation, punitive damages are capped at $250,000, or three times a plaintiff's economic damages, whichever is greater.

First, I find it interesting that those who support this legislation claim that it provides uniform Federal standards with respect to product liability. How can they even stand up with a straight face and say that? It is simply not true because, if this was truly a uniform standard, that would mean the punitive damages would be capped at $250,000, or three times economic damages in all of our 50 States. But that is not the case. Those States that currently prohibit punitive damages would be permitted to continue to completely prohibit punitive damages. They would not have to comply with this new Federal standard of allowing at least up to $250,000 or three times economic damages in punitive damage awards.

So let us be clear about what this means. This is the opposite of uniformity. If two individuals living in States with different sets of product liability laws are injured by defective products produced in those respective States the two individuals have substantially different legal rights and remedies available to them. But that is not all. One of the foremost purposes of punitive damage awards is not only to punish those manufacturers who deliberately and willfully market a product they know to be effective and dangerous, it also is to deter other manufacturers from engaging in such practices. I would presume that the reason some punitive damage awards are permitted under this bill—at least I hope this is the view—is because the supporters of this bill presumably agree that punitive damages have at least some sort of role, some purpose to play in deterring such abuses and protecting consumers.

Mr. President, this just does not add up. Under this bill, those States that currently prohibit punitive damages would be able to continue to completely prohibit punitive damages. That means consumers, children, and the elderly living in different States with different sets of laws will have substantially different protection from injuries and defective products.

So much for this notion that this bill is all about uniform Federal standards, and so much for the idea that this bill is fair, equitable, and beneficial to consumers. But again, I assume that most of the supporters of this legislation do have a feeling of supporting some concept of punitive damages, recognizing that there are clearly a set of cases where punitive damage awards are appropriate and necessary to sanction a manufacturer who has been willfully negligent.

Mr. President, I ask: Why do we not force those States that currently have this absolute rule prohibiting any punitive damage awards to change their laws and to meet this new Federal standard that is proposed in this bill?

I guess I am going to have to take a crack at predicting the answer to that question. I presume that the answer would be that we here in Congress should defer to the State legislatures that have made the determination that there should be no punitive damage awards in their State's product liability cases.

But how does this rationale justify the preemption of State laws, such as those in my home State of Wisconsin, that allow punitive damage awards where appropriate? Why do we not respect the State of Wisconsin enough to defer to the wisdom and judgment of its legislature and its Governor on this matter?

It appears to me to be completely contradictory to say that you support uniform Federal standards for product liability laws, and also support the notion that States can have different standards for punitive damage awards. The bottom line for those on the other side of this aisle is clear: Giving more power to the State and local governments is a great idea, but only when you agree with the principles and policy that those entities are pursuing.

Second, I assume that those who support limiting punitive damages do so because they believe that these awards are out of control and that limiting punitive damages will allow us to somehow simultaneously improve our productivity and innovation and somehow continue to constrain the abuses—sometimes very willful abuses—of manufacturers who market defective products.

I would like to now examine those premises. First, with regard to the frequency and size of punitive damage awards, I think that the evidence that has been presented thus far has made it clear that punitive damage awards have been grossly mischaracterized. They are not out of control. They are not adversely affecting the competitiveness of American manufacturers.

Recently, the Senate Judiciary Committee on which I serve held a hearing on punitive damage. At that hearing Dr. Stephen Daniels of the American Bar Foundation reported findings of a study that he completed of over 19,000 civil jury verdicts in 89 counties in 12 States plus the entire States of Alaska, Idaho, and Montana for the years 1988 through 1990.

Not only did this study find that punitive damages are awarded in a small percentage of all civil cases—that figure was roughly 4.8 percent—the study also excluded that punitive damage awards were modest and more often awarded in financial property harm cases than in product liability cases. This study was consistent with an earlier study of Dr. Daniels of punitive damage awards in the early 1980's. That study at that time produced very similar results.

The bottom line is that in recent years there has been virtually no proliferation in the size or frequency of punitive damage awards.

As has been cited by others as well, another study by Professors Michael Rustad and Thomas Koening found that during the years 1965 through 1990, a 25-year period, there were a total of just 355 punitive damage awards in both State and Federal courts. Roughly a quarter of these awards were reversed or remanded upon appeal. Mr. President, 91 of these cases were related to the asbestos issue. That means excluding asbestos cases there has been an average of about 10 punitive damage awards a year in both Federal and State courts for the past 25 years.

Clearly these studies and others demonstrate the inaccuracy of claims that punitive damages are increasing in size and frequency. Those who believe we need to cap punitive damage awards in product liability cases, as this bill prescribes, should understand that we are only talking apparently about roughly 10 cases per year.

What will happen to the quality of American-made products under this legislation? How concerned will multi-million-dollar corporations be about the safety and quality of their products when they are most likely to face a punitive damage award that would only be equal to a fraction of their profits in one day—just a fraction of one day's corporate profits? It does not sound like much of a deterrent.

Just last year, a California jury ordered Dow Corning Corp. to pay $6.5 million in punitive damages for knowingly manufacturing faulty silicone gel breast implants. This verdict was upheld by the ninth circuit court of appeals that found that Dow Corning knew that the product had possible defects and exposed thousands of women to a potentially painful and debilitating disease.

Under this legislation, that punitive damage award would have been reduced to three times economic damages, or about $l.4 million. It would have been a 78-percent reduction in that judgment. Measured against Dow Corning's assets of $l.4 million, punitive damage award for these acts would have only represented about 0.04 percent of that corporation's assets; just four one-hundredths percent.

What does this mean? It means that a corporation was able to knowingly market a product that they knew to be defective, and they knew it threatened the health of thousands of women. And yet under this bill they would only have had to pay a penalty of four one-hundredths of 1 percent of their assets of a huge corporation.

That is what happens when you replace the jury's knowledge and familiarity with the particulars of a case and replace it with an arbitrary cap on certain damage awards. That clearly illustrates just who stands to benefit from this legislation and demonstrates the absurdity of the notion that anyone could say that this bill is fair to consumers.

I also want to discuss the elimination of joint liability for noneconomic damages under this legislation. Opponents of the principle of joint liability make a pretty compelling case. I have to concede that on the surface it is one you really have to examine in order to counter it. It is hard to understand. Why should someone who is held to only 50 percent, or 25 percent, or even 10 percent liable for an individual's injury be forced to assume a much greater burden of compensatory damages if another liable party is financially unable to pay the damages? Certainly there is a force behind that when you just look at it on the surface. Why should a party that is held to be partially liable for an injury be forced to pay an entire damage award if the other party or parties are unable to pay?

Some believe this is a good argument for supporters of this bill. It sounds good; it sounds fair, unless, of course, you are a 10-year-old child who has lost his vision for the rest of his life because of the negligence and irresponsibility of a manufacturer who is held not entirely but the manufacturer is held partially liable for the damages. The manufacturer is partly responsible for the horrible thing that has happened to this 10-year-old.

Suppose in this case the manufacturer is held 60 percent liable while the large multi-million-dollar retail chain that sold the product is held 20 percent liable, and other parties involved make up the remaining 20 percent. Suppose the manufacturer then files for bankruptcy. What happens then? Sure, the child's family will be reimbursed for their hospital bills and maybe for the lost wages of the 10-year-old for the lawns he used to mow or the driveways he used to shovel.

When we talk about noneconomic damages—noneconomic damages—the child under this law, under this bill before the Senate, will only get a fraction of that to which he is entitled.

I notice that the interests that support this legislation have cleverly chosen to highlight kids in that age group, using the Little League of America as an example of the need for tort reform. But what about the baseball games that this 10-year-old boy could no longer participate in because of his loss of vision? What about the fact that this 10-year-old boy could no longer even watch a baseball game either at a stadium or on television? Baseball is finally back, as of yesterday and today. But this bill cuts out those considerations and caps them for a child such as this.

Is it fair that supporters of this legislation are more concerned about the manufacturer who is 10 or 20 or even 30 percent liable for an accident, partially liable, more concerned about that manufacturer than the child who is zero percent responsible, zero percent responsible, and completely innocent of any wrongdoing? Is that the right balance?

Of course, those corporate interests backing this legislation are not terribly concerned about those questions. They are preoccupied with stock reports and profit margins. You have to recognize that asking the retailer to pay more is much more fair than forcing an injured child who is 100 percent innocent of any wrongdoing to receive only a fraction of the compensation that will allow him to return to as

close a life as possible before the accident, which the retail chain is partially to blame for, actually occurred. And I think this provision, this provision that I am discussing now—and it is hard to choose because there are a lot of bad ones in the bill—more than any other one in the bill as revealing the outlandish proposition that this bill is fair. It is this provision that changes the complexion of our legal system.

This legislation will alter the precept of our legal system to say that a victim of wrongdoing and negligence is no longer the principal concern of the tort law. The principal concern will now be the profits and economic health of a business interest that has been convicted by a jury of negligence in the manufacture, sale, and use of a defective product. This is about companies that have been adjudicated guilty of making something that did not work right and that can hurt people. This is not about companies that have been found to be innocent. This legislation is grounded in a belief that it is more important for our business and manufacturing communities to remain prosperous, very prosperous in many cases, and shielded from liability than it is to return an innocent victim of a defective product back to a state as close as possible to their well-being before the accident occurred.

So, Mr. President, I look forward to returning to discuss a lot of the specific amendments and issues in the bill. Let me just conclude my opening statement by saying that I believe these choices here are fairly clear, the lines are fairly well drawn, and that bill is a bill that definitely deserves to go down to defeat in the Senate.

I thank the Chair and I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first I ask unanimous consent that the Senator from North Carolina [Mr. FAIRCLOTH] be added as a cosponsor both to S. 565, the Product Liability Fairness Act of 1995, and to the Gorton substitute amendment to H.R. 956.

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

Mr. GORTON. Mr. President, I think perhaps at this point in the debate, it may be appropriate to speak not so much to the broad nature of the bill but to two or three arguments advanced by the last two opposing Senators, the distinguished Senators from Wisconsin and from California.

Together with Senator HOLLINGS, the Senator from Wisconsin was somehow or another implicating the seventh amendment right of trial by jury into this debate and has implied at least that the bill before us somehow or another restricts that constitutional right to trial by jury.

This is a curious, perhaps a bizarre argument. It is an argument which is equally applicable to every statute, State or Federal, which sets legal parameters which juries must follow in reaching verdicts. To say somehow or another that a limitation on punitive damages is a violation of the seventh amendment is to say that a jury instruction limiting actual damages to those that have really been suffered by a victim is somehow unconstitutional, that any instructions to any jury as to what the law is under any circumstances are unconstitutional.

Even more strange, more bizarre to this Senator, is the proposition coming from Members of this body who when we are dealing with the criminal code want very strict legal limitations on sentences that can be imposed on convicted criminals. I have not heard either of these Senators argue that a jury which finds an individual guilty of a misdemeanor under Federal law should be permitted to impose life imprisonment on that convict, and yet that is exactly the proposition for which they argue here in connection with a civil case.

They argue that as a form of punishment, punitive damages, a jury's discretion should be absolutely unlimited, no matter how egregious the conduct; no matter whether we are dealing with an individual, a small company, or a large corporation, the jury's discretion should be untrammeled, and that the jury should be permitted to impose punitive damages of whatever limit.

Mr. President, that is analogous to saying a jury ought to be able to sentence a jaywalker to hanging if for some reason or other the discretion of the jury should reach that point.

Why is it—this is one question I have not heard answers to, directly or indirectly. Why is it that in our entire criminal code we have as a protection against convicted defendants limits on sentences, but in civil actions in which proof does not need to be adduced beyond a reasonable doubt but only by a preponderance of the evidence in many States, and by clear and convincing evidence should this bill pass, why here alone should that discretion be absolutely unlimited?

It is a question I would like to have answered by those who oppose any kind of limitations. A debate against the specific limitations of this bill and adjustment, a feeling that we can do better, is something that I know both the Senator from West Virginia and I are both open to. We may not have gotten the formula exactly right.

But the proposition that there should be some kind of limit seems to me to be obvious and has even moved the Supreme Court of the United States to say, without coming up with what those limits are, that there may be some constitutional limits, with the clear implication that Congress could make just exactly such a decision.

The next point that I should like to clear up at this stage, Mr. President, is the confusion, I think—and I can only ascribe it to that—which is the inevitable result of listening to opposition speakers about whether or not there is some kind of limitation in this bill on the recovery of all of the damages which an individual actually suffers as a result of the negligence of a manufacturer.

Mr. President, the only limitations in this bill are limitations on punitive damages, which by definition are not direct compensation for losses suffered as the result of an accident or of someone's negligence. No limitations are imposed by this bill on the recovery of actual damages—loss of wages, medical expenses, and the like. No limitations are included in this bill on the recovery of noneconomic damages. ''Pain and suffering'' is the usual phrase for such damages. There are those who propose such limitations, but they are not included in this bill, and this Senator does not intend to vote for any. And I believe I also speak for the Senator from West Virginia in that connection.

So no individual, none cited by the Senator from California, none cited by the Senator from Wisconsin, none cited by the Senator from South Carolina, will be deprived by the passage of this bill of his or her right to recover all economic and all pain and suffering damages which a jury determines they have suffered in a product liability action.

The only limitations are on the amount of punishment to which a negligence defendant can be subjected. And there, as I have already said, we have the curious argument that in the civil courts that punishment should be unlimited while in the criminal courts it should be subjected to very, very real limits.

I also found interesting and somewhat curious the argument of the Senator from Wisconsin with respect to joint damages. He said—and I believe I am paraphrasing him correctly—why should an innocent victim be deprived of all of the damages that victim suffered even from a party not responsible for all of those damages? That, if a retailer, for example, is responsible for only 30 percent of the losses of an individual plaintiff, the plaintiff should nonetheless be able to collect 100 percent of his total damages from that retailer.

Well, why not from you or me, Mr. President? Under those circumstances, what difference is there? Once we have determined the defendant is responsible for more than what that defendant was responsible for, there really is not any distinction between one citizen and another.

Should we, for example, in the Criminal Code, when two brothers, one wealthy and one not wealthy, are sentenced for a crime, each, in addition to a jail sentence, is fined $100,000, say that the wealthy brother should pay the other brother's fine because the other brother cannot pay it? Well, of course not. We would never think of doing that in a criminal case. And yet we do that constantly in connection with joint liability.

That is not justice, Mr. President. And if we feel that the victim should always be fully compensated, then perhaps that is a duty of society as a whole, but it should not be imposed on one party not responsible for the particular harm for which compensation is being sought.

I want to congratulate the Senator from West Virginia on his marvelously logical answers to the Senator from California on research and development of new products. Of course, if you look only at a particular victim, that victim and that victim's attorneys want the maximum possible recovery. But when the net result of the system which causes that tells one very large company that it should logically give up AIDS research or contraceptive research lock, stock, and barrel because the flame is not worth the candle, that there are simply too many risks in the development of a new product, it is not an answer to say that there are other companies that are still engaged in research. We in our society want the maximum possible number of people, of individuals and of companies, to attempt to deal with all of the ills which afflict the human race.

We were not advantaged, to take another example, when 20 years ago 20 companies made and developed football helmets and now only two are left. That is not an advantage.

Mr. INHOFE. Will the Senator yield?

Mr. GORTON. The Senator is happy to yield.

Mr. INHOFE. That is a good point to yield on.

If you will forgive me for this observation. I have been watching the debate on this most significant bill. It seems as if we have been hearing from no one except lawyers. And I do not want to lose sight of the fact that this bill is not so much a legal reform as a potential of being the largest jobs bill passed in probably a decade.

When the Senator talks about the football helmets, there are so many products that used to be produced exclusively in America that are not produced here any more for that one very reason. You mentioned football helmets. I could name a number of things.

But what comes to my mind, in the real world, I was in the field of aviation. In fact, I have the distinction of being the only Member of Congress to ever fly an airplane around the world.

I remember, when I did that, going across Europe and seeing where all of the aircraft are being made today that used to be made in America. Prior to 1980, we manufactured about 17,000 single-engine aircraft each year. In the last 4 years, we have averaged about 400 a year.

And there is not any big mystery as to why that happened. It happened because you cannot be globally competitive and offset the costs of product liability.

In fact, in the other body, when I was in the Aviation Subcommittee, we had a bill up that we were successful in getting passed finally this last year, the Aviation Revitalization Act of 1994. We had testimony from Beech Aircraft that the average cost to offset the exposure of product liability was $83,000 a vehicle. Obviously, if you are talking about a large jet aircraft, that $83,000 is not all that significant. But when you are talking about a single-engine plane or a four-passenger aircraft, you cannot be competitive.

We actually had the repose bill that I think you remember and you were participating over on this side on it.

I remember when Russ Meyer, who is the president of Cessna Aircraft, testified before our committee. Now this is a product liability bill that did one thing. It said that once a manufacturer of an aircraft or of aircraft parts had had that aircraft or those parts functioning as they were designed to function for 18 years, beyond that point they could not be held liable for something that went wrong with the product.

They had some exceptions to it. That seemed to be very reasonable. Russ Meyer, the president of Cessna Aircraft, said on the record, ''INHOFE, if you pass that bill, we at Cessna Aircraft will start manufacturing single-engine aircraft which we quit manufacturing in 1986 and we commit that we will manufacture 2,000 airplanes in the first year after the bill is passed after our tooling up.''

That is exactly what has happened. You might remember when Piper Aircraft went into bankruptcy. There was a news conference. The president of Piper said that the reason they went into bankruptcy was because they could not be competitive on a global basis. In fact, they even suggested they could move their tooling up to Canada and make the same airplanes and make a profit, while they could not in this country.

Anyway, as a result of all that, we were successful in passing that bill. I remember when it started out as being a 12-year repose and then went to 15 years. When they finally agreed to settle on 18 years, I went to the underwriting community and said, ''I think that is too long.'' They said, ''No.''

The point is there has to be some point in the future in which lawsuits cannot be lodged against manufacturers. It is now a reality. Since that time, Cessna Aircraft has done what they said they would do, they are producing aircraft.

I have heard estimates as to how many jobs will be created nationwide, and it is in excess of 25,000 jobs, just in one industry where product liability reform was the cause of the increase in jobs.

We know in Kerrville, TX, Mooney is now increasing their production rate by 40 percent. We know that Unison is now making electronic ignition systems. In my State of Oklahoma, there is a single-engine manufacturer whose first model will be coming off the assembly line in the next few weeks. It is a composite single-engine airplane. We know in Nowata, OK, they are making cylinders, all because of one thing. We reformed product liability in one industry and that industry happened to be the aircraft industry.

So I think sometimes when we become too theoretical and try to guess what the future will bring if we do this, this is an actual case as to how many jobs in America are being created as a result of product liability reform only in one industry.

I was very glad to be a part of that, and you were, too. I certainly think that is the most convincing evidence that we should expand that to other manufactured items.

Mr. GORTON. Mr. President, I thank the Senator from Oklahoma for that eloquent statement. It does seem to me that the experience of just the past year, since the passage of that small aircraft statute of repose, indicates much more graphically than can any theoretical argument the actual positive impact on jobs, on the availability of new products, of American competitiveness. We do not have to argue theory anymore. We can now argue from fact, and the burden of proof, it seems to me, is on those who say ''that far and no further'' is overwhelming.

I must tell you, when the Senator from California stated that she felt that no changes were needed in our product liability laws, and when we got the same implication from the Senator from Wisconsin, I looked up their record last year in voting on that aircraft bill expecting to find they voted against it, but they voted for it. So their position must be that aircraft is the only thing where any kind of reform is needed. Nothing else. It was the only industry adversely affected by product liability litigation.

Of course, that proposition is insupportable. If a statute of repose alone could have such a dramatically positive impact on the small aircraft industry, it is obvious that balance changes, such as these are which, as I already said, does not restrict anyone's right to recover all of their actual provable damages in any product liability case, that the positive impact of change is going to be dramatic and significant.

For those who look back and say here are terrible things that happened and we want an absolutely risk-free society in any and all circumstances, they see, I think quite erroneously, one set of consequences. Those who feel that we have not developed all of the products that we ought to develop in the history of the United States, that we should encourage new developments and that we should encourage competition, and that while those who make serious mistakes, purposeful or negligent mistakes, should be responsible for the consequences of those mistakes, we are not going to add to that responsibility, absolutely unlimited, unfettered by any discretion, punishment without any of the protections of the

criminal code that we should do that, seems to me, as I believe it does to the Senator from Oklahoma, overwhelmingly obvious.

As I said in the beginning, and as the Senator from Oklahoma said so eloquently, we now have one very positive example of how this kind of legislation works. Now let us do more of it, and I think we will see an even more dramatic recovery in many industries which have been constricted on the part of many companies that have abandoned lines of products and many new companies, entrepreneurs who would like to go into new businesses and who are discouraged from doing so by the specter of lawsuits.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, during the course of the discussion this afternoon, it seems that the debate has centered on the premise that somehow there isn't anything wrong with the present system.

Let me try to lay out some of the reasons why we need to change the product liability system, not radically, but change it in a way which makes it fair to consumers and to businesses.

Let us just start out by saying the consumers lose often under the current system. They receive inadequate compensation through product litigation. Severely injured consumers only recover about a third of their actual damages, while their mildly injured counterparts recover approximately five times their economic losses. There is a disparity there which is not good.

Consumers wait forever. They have to wait 2½ years to receive their compensation because of the whole process of a trial and depositions and then appeals, particularly where punitive damages are concerned, which can force people to wait even longer. So an injured person can be forced to wait between 2½ to 4 years to get compensated for something that happened to them, let us say in a machine shop where their hand was mangled which puts them in a position of having to depend entirely on their own resources, worker's compensation, and health insurance, if they have any health insurance. The consumer pays heavily for our current product liability system, and that is because the costs of liability insurance increase the costs of products that people need. Consumers also suffer because manufacturers decide not to introduce needed new products, and thus the consumers do not get the products they need. Consumers may be paying 50 percent of the cost of the ladder in insurance costs for liability. For some pharmaceuticals it is up to 95 percent. Under our system, consumers can pay outrageous costs.

The current tort system pays more to lawyers and transaction costs than it does to claimants. That is really a quite remarkable statement. How can we have a product liability system where somebody is injured and the lawyers on both sides end up getting more money than does the injured person? I do not understand why that is not something that somebody would want to change and make better. I think the consumer loses on that.

The consumer also faces a closed courthouse door under the current law, and that is because in some States the statute of limitations simply does not allow the consumer to take his or her request for due process into the courtroom because it is already closed; the door is closed. And we are saying in our bill that, in fact, we are going to make sure that anybody who has been injured, but may not even know it at the time because it may be a toxic injury or a chemical injury of some sort, will still be able to be compensated. Under our bill, injured persons will still be able to seek compensation 15 or 20 years after they have been injured if they do not discover that injury until that much time has elapsed. This is called the discovery rule, and it applies not only to the discovery that the individual is sick, but also to the cause of the illness, and once that has been discovered, the statute of limitations for 2 years begins to run.

This is a very proconsumer change, particularly in the world that we are moving into, which has so many toxic chemicals that can threaten the health of consumers.

I think, also, because we have talked about consumers—and this is meant to be a balanced bill so let us also talk about manufacturers. I think manufacturers lose under the current system.

Liability stifles research, and it stifles development. This has been amply recorded in the literature. Many businesses spend a lot more on litigation than on research and development. That may not be the only reason. Companies tend to be pulling back on R&D anyway. But the fact that they spend more on litigation—many do—than on R&D does not sound to me like an American sort of system. Well, that is our current system. I would think people would want to make it a better one. Liability makes successful products unmarketable.

I have already talked this afternoon about Bendectin, the antinausea medication, different AIDS-related and pre-AIDS-related vaccines and medicines, football helmets, and others. They simply are not made available because it is decided they are too big a risk and therefore Bendectin, which is available in Canada and has been for years, is not available in the United States, and thus our consumers and our manufacturers lose under this because they are precluded from doing something for fear of litigation.

Liability decreases funding. That is fairly obvious. The fear of product liability has diminished investment in basic scientific research. Now, that is important because you have basic research and you have applied research leading to commercialization of a product, and they are very different. Basic research is sort of the seminal research. That is the kind of thing where you really have to have a sense of stability and predictability and confidence in the future, and that is now way down, and part of the reason for that is the fear of product liability litigation.

I think that the United States itself, as a country, loses under the current system of product liability. Insurance rates disable manufacturers. American manufacturers pay 10 to 50 times more product liability insurance rates than do their foreign competitors. Well, at some point, when you are fighting over every nickel in a car or in some vaccine, or something else, these things matter, and the foreign country wins out and we lose out. So America loses out.

In fact, in Texas, in a single year, they have estimated that the liability system has cost the State of Texas 79,000 jobs. I cannot prove that, but that is what has been said. Texas stands behind that. Seventy-nine thousand jobs in West Virginia would be as if a substantial part of the population simply moved out. And then the funny thing also is that there is no real proof that the current product liability system does not enhance product safety. It is interesting that the number of tort suits rose dramatically in the 1980's, even though consumer injury rates declined steadily. Tort goes up, injuries go down, and now that was not just in the 1980's but also in the 1970's. For 20 years, injuries were going down and tort actions were going up.

Let me spend a moment discussing the costs of the tort system in the United States. Estimates of the cost of tort litigation, of which product liability litigation is part, range from $80 billion to $117 billion a year. Concerning the need for uniformity, the United States has 51 separate product liability systems. The European Economic Community, which is 13 countries, has one product liability system. Japan has one system. I have worked very hard in Japan. For years we had something called the structural impediment talks with the Japanese, and we would tell each other what we thought each country ought to do to improve their performance so that our trade deficit would get better and theirs would get less better, and one of the things the Japanese kept saying to us was that you ought to get more uniformity into your product liability laws because you are getting eaten alive by a lot of countries, including ourselves.

This is staggering, and I hope that those who hear my voice will listen to this. Nearly 90 percent of all companies in the United States of America can expect to become a defendant in a product liability case at least once. It has been suggested that there were only 11 cases in which punitive damages were awarded in 1990. But if 90 percent of all businesses can expect to be sued at some point, this is the so-called

chilling effect. Are 90 percent of American businesses doing the wrong thing each day?

Manufacturers today can be sued for products that were manufactured in the 1800's. I do not think that is the American way.

Companies can be forced to pay damages to persons whose abuse of alcohol and illegal drugs caused their injuries. That is wrong; that is unfair. In 1994, the Gallup survey said that one in five small businesses reported that they have decided not to introduce a new product or not to enhance an existing one out of concern for potential product liability. That is 20 percent of all small businesses saying we are not going to improve our product, or we are going to withdraw the products we are about to introduce.

Interestingly, the Brookings Institution found no link between lawsuits and the safety of products. That is an important statement. And they documented many instances where safety improvements are not made, again, because of the fear of litigation. That being, if they made an improvement, it would imply that the previous iteration was somehow not safe and therefore they might get sued.

The United States is the only nation in the world that allows a safety improvement to be admitted as evidence that the preceding product was less safe. We do it legally. Therefore, companies have reason to be afraid.

I note that it is 5 o'clock. I yield the floor.

The PRESIDING OFFICER (Mr. BROWN). Under the previous order there will be 1 hour of debate equally divided between the Senator from Michigan and the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the Senator from Michigan would amend his amendment to provide not just ''claimant'' but ''parties''—which would be both the plaintiff and the defendants.

Therein, Mr. President, goes right to the reason—one of the big reasons—I put in my amendment to his. It was quite obvious to me, quickly reading on last evening the amendment of the distinguished Senator from Michigan, that here they were getting plaintiffs' lawyers. In my amendment I wanted to get at all lawyers.

Now, right to the point, in this limited time, once again what we have, Mr. President, is an issue that searches for justification, or a solution looking for a problem that has been going on for some 15 years.

It started, of course, back in the Ford administration whereby they said it was a national problem, and President Ford appointed a commission. The commission found it was not a national problem and recommended leaving it to the States.

They were not satisfied with that, Mr. President. They came in and said insurance was impossible to obtain. We, of course, refuted this argument, and they do not even contend for it today.

Otherwise, they came with the claim that there was a litigation explosion and we needed massive product liability reform in order to confront the national litigation explosion, which, of course, was decreasing not increasing.

Then they came and said they were not developing certain products out of fear of litigation, this was particularly true in the drug and chemical industry. Of course when we were debating NAFTA and GATT these industries proclaimed that they were world class and could compete with anybody in the world. So then they came with competitiveness. There was a buzz word that went on around here for about 5 years, that the market—by the way, which now we will leave everything to the market forces—the market was insufficient and what we needed was a Congress to pass a law to make us competitive, and that unless we legislate product liability we could not be competitive.

Of course, we pointed out in our own backyard we had some 100 German industries, 50 Japanese industries, blue-chip corporations of America, who all were coming to my State and never once complaining about product liability.

I have been the Governor and the Senator there now for numerous years, and the attraction of industry and we can relate industry after industry almost get a habit of asking the question. So it was not competitiveness.

Then they started with various gimmickry with respect to the Little League. They said, no, they were not involved. And then they went, of course, to the matter of the Girl Scouts. The Girl Scouts said, ''Wait, wait. That is not the case at all. We do not have a problem with product liability.''

Then they had a little TV show where a former colleague, Senator George McGovern of South Dakota, came on and said he went broke on account of product liability. Now they have quit running that because that is not the case at all.

Still a solution searching for a problem, now they place their ace card—lawyers, aha. Any time we take a poll in America, immediately the disdain for lawyers. So they say, if we cannot get this bill passed on lawyers, it will never pass.

It talks here in the amendment, as I was just reading it, of ''equity in legal fees.'' I challenged the distinguished Senator from Kentucky and the Senator from Michigan on last evening to bring me the series of product liability cases where somehow the clients had been done in by the plaintiff's lawyers.

Of course, the amendment by the Senator from Michigan termed it ''claimants.'' Now I guess he would like to say, just a minute, we will change ''claimants'' to ''parties'' and get attorneys on both sides.

But there is not any question that these men are very erudite and very learned and have written books in law and everything else of that kind, and they knew what they were doing until, of course, we put up our amendment, and said, wait a minute, we will bring into focus the real issue here, and that is not product liability, but lawyers.

Now, if I could put in a bill to solve the lawyers problem, I would do it. However, I do not know that we are that good here in the Senate of the United States.

Be that as it may, the idea is, as was said in Henry VI ''Kill all the lawyers.'' Take any poll, and if we can convince the individual Members, who are busy on so many different issues, to come now and vote whether for or against lawyers, they will vote against the lawyers, and we will get this bill passed.

I think of the saying:

> Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? . . . I know not what course others may take, but give me liberty or give me death.

Patrick Henry, the lawyer.

We can see, Mr. President, that young leader sitting with his bill in hand, crafting the Declaration of Independence, Thomas Jefferson, the lawyer, or the father of the Federalist papers.

> But what is government, save the best of reflections on human nature? If men were angels, the government would not be necessary. And if angels governed man, there would be no need for controls over the government. So the task in formulating a government to be administered by man over man is first, frame that government with the capacity to control the government and thereupon oblige that same government to control itself.

James Madison, father of our Constitution.

Again, going up all Presidents right on up to Abraham Lincoln. We can see him, ''equal justice under law,'' signing the Emancipation Proclamation. Abraham Lincoln, the lawyer.

Or the darkest days of the Depression, people searching for hope. ''All we have to fear is fear itself.'' Franklin Delano Roosevelt, a lawyer.

I can see now in December 1952, standing before the Supreme Court of the United States.

> But your honor, if the State-imposed policy of separation by race is removed, the young children will have the freedom to choose their school and their own classmates and play together.

The beginning of the end of segregation in this land. Thurgood Marshall, of the NAACP, a lawyer.

Even today, we find Ralph Nader crusading for safety and health. On last evening's TV Morris Dees down in Alabama, working around the clock—or Mississippi, I forget. I know Morris but I have forgotten. I just came back from Mississippi, but I know he has this Southern policy on poverty, Southern law center on poverty where he has been tracking that Ku Klux Klan. And

now the Michigan Militia and the others, against terrorism, at the risk of his own life; Morris Dees, a lawyer.

We begin to wonder, if these lawyers had been silenced what we would have in this land? Obviously I am very proud to be an attorney at the bar and I am not going to join in this derision, save of those who just really are fixers rather than lawyers at the bar, and Heavens knows this city of full of them—60,000 lawyers and the majority of them come now to fix us, the jury, on billable hours.

Pat Choate wrote his book, ''Agents of Influence,'' how the Japanese have those attorney firms, over 100, retained at a cost of over $110 million. The country of Japan, by pay, is better represented than the people of the United States in Washington. The consummate pay of 535 House Members and Senators is only $71 million. But they are all over us, and that is the genesis of this thing that has been going on for 15 to 16 years—the power of the lobby. Because the problem does not exist. It is not a national problem. We do have product liability; 46 of the 50 States have reformed their product liability laws in the last 15 years. But now comes the ace card, if we can play this with respect to the equity of legal fees. What is the equity? That is the most amazing thing, to this particular Senator, to have the parties sponsoring this legislation and trying to amend it talking in terms of the consumer, how they are looking out for the consumer. Every consumer organization in the country is absolutely opposed to this bill. The American Bar Association, they do not have lobbyists up here. The Association of State Legislators, they do not have lobbyists up here. The Association of State Supreme Court Justices, they do not have lobbyists up here.

But yes, the Business Round Table, the Conference Board, the National Association of Manufacturers, the chamber of commerce—yes, they keep big buildings full of lobbyists. So we got this legal reform movement going and it has been a faltering point. So now they will bring in equity in legal fees on last evening—of course for plaintiff and not for the defendant. Now the distinguished Senator says, ''I want to make it for both sides.'' That is what my amendment said.

Billable hours—we are paid at $133,000. I figured it out. If we could have, rather than a minimum wage, have a maximum wage for these fixers, we would have a $50 a billable hour limitation. If they work 51 hours, I would give them $133,000 a year and then if they work some on the weekend they could go on up to a couple of hundred thousand dollars—pretty good. But I figure we ought to pay them as much as we pay the Senators, and that would be a goodly plenty and I think it would clear out 30,000 of the 60,000—if we want to get rid of the lawyers. If we want to get rid of the lawyers.

So there is the amendment to bring into focus the absolutely empty nature of this particular initiative. And it is lobbyists moved, organized, financed, motivated, committed for in the campaigns. Yes, when I ran in 1992 I had the different groups come to me: ''Can't you help us this time on product liability?'' I said, ''They just passed the reform here in South Carolina. What is the problem? Ask the judges; go to talk to our judges. Most of them are Republicans, obviously, in South Carolina. They had been appointed by President Nixon, President Reagan, President Ford, President Bush. They will tell you in a flash it is not a problem.'' But they have to find some reason. Now they are playing the ace card, and that is why I put up this particular amendment.

I do not guess I will be able to control them. I would like to. But, be that as it may, we have had our time at bat to expose the nature of this particular amendment and the nature of this particular legislation. It is absolutely not in the interests of consumers, not in the interests of good law. We have the professors, 121 professors at law have come as a group to attest against this particular measure. They do not have lobbyists up here. No, it was not considered in the Judiciary Committee where fundamental law is considered. There was a quick 2-day turn, adding on amendments in the evening, destroying any idea of uniformity.

That is what they started with. At least they had the good conscience to change the title. I thought maybe it was a gimmick, but I will give them credit for conscience. You will find this bill over on the House side, ''To regulate interstate commerce by providing for a uniform product liability law.'' But when you get over to the Senate side it is some kind of fairness act they call it now. They at least got away from the uniformity, not trying to continue that particular charade. ''This act may be cited as 'The Product Liability Fairness Act Of 1995.' ''

So we have the amendment relative to fees and instituting regulatory measures—bureaucracy at its worst. I have time to practice law but not to keep all the records. I have a simple, clear-cut contingent fee. I assume all the costs, assume all the expenses, assume all the bills for the doctors, the witnesses, assume all the printing measures for the transcript of the record, the appeal record and everything else of that kind going up to the court—I assume all of those. And when I get through, if we win then we get the third. If we lose we get nothing and I have paid all the bills.

It goes right to the heart of the misunderstanding of the distinguished Senator from West Virginia, Senator ROCKEFELLER, when he talks about delays, the trial lawyers delay. Heavens above, you get 10 or 15 of these cases you have backed up in the office thousands of dollars of cost and hours spent and never paid for. Billable hours? I never had a client with billable hours in 20 years of law practice, but you got that backed up. It is in my interests to bring that to a conclusion. I have to move on these cases. We are not trying to delay.

The ones who can sit up in the ivory tower on the 32d floor with the mahogany walls and Persian rugs and all the secretaries running around and all the investigators and you press buttons and say ''Well, yes, I am having this coffee but mark it down as thinking. Give me another billable hour.''

Come on. You are worried about lawyers and their fees? Let us get to the defense counsel that is running up the majority of the costs. He is absolutely wrong. He is not for the consumers, the Senator from West Virginia. They are getting their money. They are not complaining. And they are getting the majority of it. When it comes to who gets the majority of the fees, plaintiff or the defendant, the defendants do. The national insurance study, we put it in the committee report, shows they are the ones running up the costs. We have no time or interest in running up any kind of costs whatever.

It is a proud thing in America that the poor and middle class can get competent representation. It has worked. It continues to work. It is not a national problem. They never have had a hearing in any particular body about lawyers' fees. But if that is the game, then when we take up medical malpractice we will go into doctors' fees. And we will try these amendments and initiatives that they have because they cannot prove their case otherwise. I wait for the distinguished Senators from Kentucky and Michigan to show me the series of cases in product liability where there was not any, as the title says here, ''equity in legal fees.''

I retain the remainder of my time.

The PRESIDING OFFICER. The distinguished Senator from South Carolina retains the remainder of his time. It is 11 minutes.

The distinguished Senator from Michigan is recognized.

AMENDMENT NO. 597, AS MODIFIED, TO AMENDMENT NO. 596

Mr. ABRAHAM. Mr. President, I yield myself such time as I desire.

Mr. President, following discussions with my colleague from South Carolina, and the managers, I ask unanimous consent to modify the underlying first-degree amendment. I send the modification to the desk.

The PRESIDING OFFICER. Is there objection to that modification?

Mr. HOLLINGS. No objection.

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

The amendment (No. 597), as modified, to amendment No. 596, is as follows:

At the end of the amendment add the following new title:

TITLE III—EQUITY IN LEGAL FEES

SEC. 301. EQUITY IN LEGAL FEES.

(a) DISCLOSURE OF ATTORNEY'S FEES INFORMATION.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term ''attorney'' means any natural person, professional law association, corporation, or partnership authorized under applicable State law to practice law;

(B) the term ''attorney's services'' means the professional advice or counseling of or representation by an attorney, but such term shall not include other assistance incurred, directly or indirectly, in connection with an attorney's services, such as administrative or secretarial assistance, overhead, travel expenses, witness fees, or preparation by a person other than the attorney of any study, analysis, report, or test;

(C) the term ''party'' means any person who retains an attorney in connection with a civil action arising under any Federal law or in any diversity action in Federal court;

(D) the term ''contingent fee'' means the cost or price of an attorney's services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained;

(E) the term ''hourly fee'' means the cost or price per hour of an attorney's services;

(F) the term ''initial meeting'' means the first conference or discussion between the party and the attorney, whether by telephone or in person, concerning the details, facts, or basis of the claim; and

(G) the term ''retain'' means the act of a claimant in engaging an attorney's services, whether by express or implied agreement, by seeking and obtaining the attorney's services.

(2) DISCLOSURE AT INITIAL MEETING.—

(A) IN GENERAL.—An attorney retained by a party shall, at the initial meeting, disclose to the party the party's right to receive a written statement of the information described under paragraph (3).

(B) WAIVER AND EXTENSION.—The party, in writing, may—

(i) waive the right to receive the statement required under subparagraph (A); or

(ii) extend the 30-day period referred to under paragraph (3).

(3) INFORMATION AFTER INITIAL MEETING.—Subject to paragraph (2)(B), within 30 days after the initial meeting, an attorney retained by a party shall provide a written statement to the party containing—

(A) the estimated number of hours of the attorney's services that will be spent—

(i) settling or attempting to settle the claim or action; and

(ii) handling the claim through trial;

(B) the basis of the attorney's fee for services (such as a contingent, hourly, or flat fee basis) and any conditions, limitations, restrictions, or other qualifications on the fee the attorney determines are appropriate; and

(C) the contingent fee, hourly fee, or flat fee the attorney will charge the client.

(4) INFORMATION AFTER SETTLEMENT.—

(A) IN GENERAL.—An attorney retained by a party shall, within a reasonable time not later than 30 days after the date on which the claim or action is finally settled or adjudicated, provide a written statement to the party containing—

(i) the actual number of hours of the attorney's services in connection with the claim;

(ii) the total amount of the fee for the attorney's services in connection with the claim; and

(iii) the actual fee per hour of the attorney's services in connection with the claim, determined by dividing the total amount of the fee by the actual number of hours of attorney's services.

(B) WAIVER AND EXTENSION.—A client, in writing, may—

(i) waive the right to receive the statement required under subparagraph (A); or

(ii) extend the 30-day period referred to under subparagraph (B).

(5) FAILURE TO DISCLOSE.—Except with regard to a party who provides a waiver under paragraph (2)(B) or (4)(B), a party to whom an attorney fails to disclose information required by this section may withhold 10 percent of the fee and file a civil action for damages in the court in which the claim or action was filed or could have been filed.

(6) OTHER REMEDIES.—This subsection shall supplement and not supplant any other available remedies or penalties.

(b) EFFECTIVE DATE.—This title shall take effect and apply to claims or actions filed on and after the date occurring 30 days after the date of enactment of this Act.

Mr. ABRAHAM. Mr. President, the distinguished Senator from South Carolina indicated, as we discussed the effect of the modification, it is to correct the transpositional error that took place when we took language from another piece of legislation and created this amendment. My intent was, and remains, to apply the amendment that I offered initially, not just to the clients of plaintiffs' attorneys but to the clients of defense attorneys as well. That is the purpose of the modification, to fundamentally change the word from ''claimant'' to ''party'' so it would apply to all cases.

Mr. President, what I would like to do is talk briefly about why this amendment was offered initially and to clarify some ambiguities and some misunderstandings that appeared to exist and comment a little bit about the merits of the amendment.

First of all, let me begin by saying that I am an attorney, as is the Senator from South Carolina and many other Members of this body. I respect my colleagues who are lawyers. I respect the attorneys who practice in my State and those who practice in the other States. I believe most lawyers are doing an outstanding job, and I think that consequently the amendment I am offering is not going to really have much effect on the overwhelming percentage of attorneys in America. In fact, the goal of my amendment is essentially to eliminate bad practices undertaken by some attorneys who do not attempt to keep their clients well informed as to the arrangements into which they enter.

Often we have, particularly in cases where clients who are less experienced in the legal system, clients who are unsophisticated about the ways in which attorney-client relationships work, we have situations where clients are less informed than they should be about the arrangements they are entering into. Such is the case when I go to have my television or my automobile repaired and inquire ahead of time for some assessment of what the cost will be and what is wrong with the car or the television set. I think many clients of attorneys need similar help to make informed decisions about the types of arrangements that they will enter into.

That is basically the purpose of my amendment. People are unhappy in my State and elsewhere with respect to the way the current system of legal fees is entered into.

Just to mention a couple of cases in point, I recently received a letter from a Michigan resident who wrote that the U.S. District Court for the Northern District of Illinois had just notified him that he was included in a class action case, and the court soon would be holding a hearing whether to give final approval to a settlement with Chrysler Corp. under the proposed settlement. Under the alleged defect in the Chrysler credit leases, each class member was going to be paid between $2 and $2.50. The attorney who brought the case would be paid up to $175,000. Under this agreement, the lawyer would get enough money to buy a big, new house. The victims would get enough to buy a Big Mac.

That struck me as hardly the kind of appropriate practice that we should tolerate without the clients having full information as they become engaged in the matter. That is the reason a number of organizations that represent consumers have called for the kind of amendment which I am offering here today.

Bill Pride, the executive director of an organization of Americans who are for legal reform—and the only consumer group, I might add, that has publicly stated that it accepts no money from big business, supports disclosure of attorney fees, and the sort of approach I am taking with this amendment—recently testified before the House Judiciary Subcommittee on Courts and Intellectual Property. He stated that because of its complexity and expense of lawyers, the legal system is inaccessible to more than half the population when they have legal problems. For low-income people, legal help is almost nonexistent except for the most poor, who qualify for legal aid. Millions of middle-income people cannot get any help from lawyers for simple remedies because of the complex and expensive and intimidating procedures established by the legal profession.

He went on to indicate the need for reform. One of the reforms that his organization supports is the kind of fee disclosure proposal which I am offering here today because of its potential value to the clients as they enter into legal relationships and negotiate fees.

So indeed there are people who are not satisfied with the information they have with regard to entering into legal arrangements and who are not sophisticated enough in dealing with entering into those relations to enter into them in a knowledgeable way, or to even know what their options are.

My coming here today is not to argue that fees are too high or too low or wrong or right. I did not come before the Senate with this amendment to affect the fees that are paid. What I came here for was to try to provide a system by which fee arrangements would be

entered into by the less sophisticated among us on a knowledgeable basis.

The requirements I am suggesting in the amendment I believe are both simple and fundamentally fair. Without going into all of the details again, as I did yesterday, basically the amendment requires attorneys—and under the modification, this will be for the defense as well as for plaintiffs' counsel—prior to the entering into an arrangement to provide the potential client with information as to an estimated amount of time that would be involved in handling the matter with an explanation of the various options available as far as the nature of the arrangements that would be entered into, whether it would be hourly billing, or a national fee, or a contingent fee, and then an explanation as to the type of fee as well as the specific amounts that would be employed; in other words, the per-hour amount, the contingent percentage, or the national fee. Following completion of the matter, a similar kind of accounting would take place in which the actual hours would be made available to the client, the amount of the fee which was ultimately calculated or charged, and then the computation of what the hourly rate would be.

I recognize that for some small law firms, this may be more burdensome than for others. But like the Senator from South Carolina, who I gathered was in a small firm at one time in his career, I began my legal career when I left law school in a small firm in Lansing, MI. We did not have a lot of fancy computer equipment or access to accountants. But we did maintain a pretty good recordkeeping of our own efforts and the hours that we put in on matters, regardless of the nature of those matters because, simply, we thought it was to be able to operate our offices in an efficient fashion, as well as to serve our clients better and to be able to satisfy requests of this sort if they were to come from clients who knew their rights included the ability to make such requests. But I will add a few other points.

The amount that I am offering has several options in it. One is a waiver option. Clients may, under the amendment, waive their rights to this information either preliminary to or following the transaction of a legal matter. It does not require, therefore, that in each case the attorney provide this information.

Second, I think it is very consistent with a recent formal opinion, formal opinion No. 94–389, addressing attorneys' contingent fees, which was recently entered into by the American Bar Association Standing Committee on Ethics and Professional Responsibility. That section, at page 7, said that, among other things, regardless of whether the lawyer and the prospective client, or both, are initially inclined toward a contingent fee, the nature and details of the compensation arrangement should be fully discussed by the lawyer and client before any final agreement is reached.

It went on to say that among the factors that should be considered and discussed are the following: The likelihood of success, the likely amount of recovery or savings if the case is successful, the possibility of an award exemplary or multiple damages, and on and on. And included in the things that were recommended was the amount of time that is likely to be invested by the lawyer.

In other words, the proposal I am making is not the only one that I think many lawyers already follow. It is also something which the American Bar Association, which may be on different sides of other parts of this pending legislation, has in its own recent opinion suggested ought to be followed.

Finally, I will just say that we are not in this legislation telling the States what to do. This amendment is limited to actions within the Federal court; in short, within the purview of what I believe is the appropriate purview of this Congress in determining the areas in which we might apply these types of regulations; in short, the matters before our Federal courts.

So I would just conclude by saying that when I proposed this and brought it to the floor, I really did it with a belief it essentially was a matter which would give consumers more information, a right to know what the legal fees they were entering would be like, what they should anticipate, what their options were, an accounting for those fees. In no way was it my intention to cast aspersions on the legal profession. Certainly it was not my intention to be critical of the many fine lawyers who are referenced by the speech of the Senator from South Carolina. I hope that was not the case.

We are always hearing in the Congress the concerns that virtually all of us have I think about consumers, about the interest of consumers, about the interests of people who are frequently finding themselves in a disadvantaged position with respect to big business, with respect to big Government, with respect to other big institutions. Many of those individuals find themselves from time to time in circumstances where they would like to litigate a concern or defend one. If they are not well informed, it seems to me they are at an even greater disadvantage, and I believe that this amendment provides a chance to help them and at the same time improve the legal system.

It is the case that there is a lot of criticism about lawyers and the way the legal system works. One of the reasons this legislation on product liability was generated obviously was because of concerns about the system. I do not want to kill all the lawyers. I wish to improve the legal system. I think by eliminating from the many concerns people have the concern that they are brought into legal arrangements without the full knowledge of their options, without the full accounting of the time and the dollars involved, that it would substantially improve the system and the way it functions.

Finally, as I said a little earlier, I think we are asking here lawyers to do nothing more than we ask of many other professionals in many other service parts of the economy. As I mentioned, when I go to the auto shop with a car problem, I am given information as to what is likely to be wrong, what the likely cost of repairs are, and so on, so that I can make an informed decision whether I wish to pursue repair.

We are told that it is harder to do that in this context because it is a more complex area, and I agree it is more complex. But I think, because of its complexity, because it is a more difficult area, that is all the more reason why we should try to get the people who come into this often intimidating setting the sort of information that would allow them to make knowledgeable decisions. That is the purpose of my amendment.

At this time, Mr. President, I reserve the remainder of whatever time I have remaining.

The PRESIDING OFFICER. The Senator from Michigan has 17 minutes remaining.

Who yields the Senator from West Virginia time?

Mr. ROCKEFELLER. Mr. President, I yield myself time.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, at 6 o'clock, we are going to have two votes, and as the Democratic manager of this bill I wanted to alert colleagues on both sides as to the plan that the Senator from Washington [Mr. GORTON] and myself have, what we are going to do so that Senators might be appraised of the situation.

The PRESIDING OFFICER. Will the Senator suspend for a moment. Since we are under a time agreement, the Chair asks who yields the Senator from West Virginia time?

Mr. ROCKEFELLER. I yield myself 3 minutes.

The PRESIDING OFFICER. The time remaining is divided between——

Mr. ABRAHAM. Mr. President, I so yield.

The PRESIDING OFFICER. The Senator from Michigan yields the Senator from West Virginia time. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Again, I want to let my colleagues know of the situation and what Senator GORTON and I will do at 6 o'clock. We are here to consider repairing something called the product liability bill. We are not here to determine the hourly rates of lawyers. We are not here to do a variety of other things.

Therefore, the Senator from Washington will move to table the amendment of the Senator from South Carolina, and I will move to table the amendment of the Senator from Michigan.

We are not here, again, to determine how lawyers' fees should be publicized. That is my reason. I understand the interest that both Senators have in raising these questions. But I want the Senate to consider a bill that has been the subject of hearings, close scrutiny, and careful work, and that is called the product liability bill. I do not think this bill is the bill to use as a vehicle for regulating the fees of lawyers, telling them how to publicize their fees or intervening into the lawyer/client relationship.

In moving to table these amendments, the managers and authors of this bill want to make a point, however. We are discouraging, actively discouraging amendments outside the scope of the product liability bill itself. We welcome constructive revisions to this bill within the context of the bill, but we do not welcome the phenomenon of loading up on this bill for the purpose of making points, some of which might be valid, but we just do not want to do that. And we do not want to have amendments scoring points against lawyers.

So we are here to do the serious work of the product liability bill, and I want my colleagues to be informed as to how the managers will proceed.

I thank the Senator from Michigan and I thank the Presiding Officer.

The PRESIDING OFFICER. The Senator from Michigan retains 14¾ minutes. The Senator from South Carolina has 11 minutes remaining.

Who seeks recognition? The Senator from South Carolina is recognized.

Mr. HOLLINGS. I thank the distinguished President.

Mr. President, I am trying to find—I thought we had found it. After the day was over last evening, I went back to my office and I said on that airline case, several airlines really of overcharging, and the lawyers steamed up a class action, and as the distinguished Senator from Michigan reported in a letter to the colleagues, the lawyers got some $16 million and others got coupons worth $20 or $25, one of my secretaries said, ''Yes, that got lost in the mail. You had a chance to do it.'' But I said I never heard it, but I had plenty of money left on the table, I guess, because I never knew anything about the case. So a young attorney in my office said, ''Well, I denied knowing anything about the case, but I got $150 when I got notice.'' I said, ''Well, who are the lawyers?'' He said, ''I don't care. I do not know who the lawyers were and don't care. They got me some money.''

Now, no one is complaining about the lawyers and no one is inventing equity. The truth of the matter is we had some 15 years ago, I say to the Senator from Michigan, a big debate about the Federal Trade Commission coming in and regulating attorneys and attorneys' fees and everything else of that kind.

And we can have the hearings again and come back and go over that thing. But in the last dozen years we have not had hearings on this. The best the Senator from Michigan refers to is a letter from Michigan about a class action and one gentleman over on the House side who testified supporting disclosure of fees. I hope he does support disclosure of fees. All of us at the bar do.

Here I hold in my hand ''Model Rules of Professional Conduct and the Code of Judicial Conduct'' from the Center of Professional Responsibility of the American Bar Association. And we practice under this. And it has on page 18 rule 15 about the fees and it runs down—I do not want to spend all my time, but it has not only the time and labor required, much better than the amendment of the Senator from Michigan, the amount involved, the time limitations, the nature and length of professional relationship, the experience, whether the fee is fixed or contingent, right on down, all in writing.

I never have found that client—I guess that is the nice experience of mine—complain to me about the handling of product liability.

And we have had it up five times before the Commerce Committee, five times with hearings, five times the report and we had every ramification that you can think of on product liability, and here we come again and without ever having any testimony whatsoever or the subject raised about fees, a Senator or a couple say, well, let us go to lawyers. We cannot get them on the Girl Scouts or the Little League. We cannot get them about their former colleague going broke.

There is no litigation explosion. The only explosion is businesses suing businesses. And after all, remember, we are representing consumers. Now, if anybody believes that, I happen to represent the consumers in this instance and not the manufacturers. They are trying to take advantage here, when we are talking about welfare reform, making the recipients more responsible, we are going backward and saying manufacturers be more irresponsible. We have got a long litany in this debate about the good in America for the safety of products. We can count on it. It redounds to our safety and our health; we almost take it for granted. Where there have been some adjustments, the States have taken care of it. But fees, the equity in fees, to assume that there is not any and that you need to pass a law in Congress to get it is ludicrous, really laughable.

I mean any lawyer go down here, or anybody else, to my billable hours friends. They will tell you the American Bar and everything else like that. They do have an understanding with the billable hours. They like it. The phone rings. ''Wait a minute.'' ''There is another $25. I answered the phone.''

''You got a copy of that? Twenty-five cents for every copy. Run some extra copies. We have to pay for the copy machine.''

''Put a little fee on the computer.''

Senator ABRAHAM and I can get computers now. Put fees on those. Little internal fees for computers, like these MRI's at the hospitals, paid for five or six times. They have bought every computer downtown 10 or 15 times with little fees on the computers.

Lawyers know how to look at these. I am one trying to look out for the clients. Let us not diminish the rights of the clients.

I can tell you now, yes, in Henry VI, Dick the butcher says, yes, that the first thing we must do is kill all the lawyers. That was not, in a sense, a demeaning or pejorative term. He was saying, if tyranny was to succeed, the tyrants must first kill the lawyers. And if demagoguery is going to persist and succeed, then we are going to have to get rid of all the lawyers who are going to expose the demagoguery that is going on in our Government today.

I can tell you here and now, I am proud of that expression ''Kill all the lawyers,'' because it is the best of all compliments. We stand in the way of the takeover of the big business and the clients that have kept this going for 15 years, again and again and again and again, with commitments and elections and everything else working. And it is that poor, injured client in middle-class America, they cannot pay any billable hours, so they come in.

And, yes, you know, no matter how thin the pancake, there are two sides to every pancake and every question. And you do not have a sure shot. You have to get all 12 jurors. You do not try a case and get a majority vote as we do in the Senate. You have to get a unanimous vote by the greater weight of the preponderance of the evidence, or for punitive, willful misconduct, by the greater weight of the preponderance of the evidence.

Do not act as though there is a problem out there with respect to the trial of cases. If there is runaway verdicts, it is businesses suing businesses upon suing businesses upon suing businesses. They love to come all dressed up and go in the boardroom and say, ''Well, take them on.'' Of course, the lawyers, billable hours, ''Hot dog. That will take care of the family and send my boy through college during the next 4 years. Billable hours, whoopee. We had a board meeting today, and let me tell you who we are going to sue. I have no idea if they are going to win it, but it will take care of me.''

That is what has been going on in the courtroom and cluttering it up, and not these tort claims because, yes, they are more safe. There is less injury, and if there is less injury, there is less tortuous injury.

I cannot understand the logic of the Senator from West Virginia, who uses his hands up and down, whatever it is. It is not relevant whatsoever, or not responsive.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina retains the remainder of his time. He has a little over 2 minutes remaining.

Who seeks recognition?

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. ABRAHAM. I yield myself such time as I desire.

Mr. President, I just want to reiterate a couple of points I made. The purpose of the amendment which I have offered is not defined to affect legal fees. In fact, it is the second-degree amendment that the Senator from South Carolina has offered which would attempt to put constraints on those fees.

Again I express, all I am trying to do is provide information, both before as well as after the entering into of a legal arrangement between clients and their attorneys.

I think the descriptions of such an amendment as being overly bureaucratic and so on is really inconsistent with several facts. First, the fact is that whether it is the distinguished Senator from South Carolina or other Members of this Chamber who are attorneys that I have spoken to on this or heard from about it—and I have heard from several—virtually to a person, they indicate that in one way or another they already perform the function of information and transmission that we are talking about.

The attorneys in my State who have talked to me prior to the offering of this amendment and since have likewise said that in their current arrangements, they provide similar information. But they all acknowledge, at least the ones in my State, that there are people in the practice of law who do not. And the people who are unfortunate victims in these situations are the less knowledgeable, the people who are less familiar with the legal process and what their rights are when they enter into these kinds of arrangements. They frequently are in a disadvantaged position because they are the victim of an injury or a harm and in a disadvantaged position because they are intimidated entering into the legal process itself.

Again, I stress that this is really, in my judgment, a choice between helping consumers or inconveniencing those attorneys who do not follow the various American Bar Association and State bar association guidelines that both the Senator from South Carolina and I have referred to or the practices of most attorneys.

It seems to me that to inconvenience those attorneys who do not feel it is their responsibility to at least inform their clients as to the kind of fee arrangements they are going to enter into and the likely amount of time involved, as well as to inform them after the fact of what the costs are and how much time was involved, to worry about inconveniencing them rather than worrying about protecting those consumers of legal services that are at least the victims I am trying to help with this legislation is to have the balance struck the wrong way.

So, for that reason, I believe the amendment makes sense.

I would also just reference back to the example we used yesterday that was in a letter we sent around regarding the airline matter. It was brought to my attention by an article in the Washington Post. The article was written from the perspective of one of the various people who were part of the class of people that were affected and received these awards. It was not a complimentary position that was taken by that plaintiff. It was a position of somebody who apparently was representative of a lot of other plaintiffs that were not happy. They were unhappy with the outcome. That is often the case. I think it is particularly the case when people have no information as to what the fee structures will be. And for that reason, I think the amendment that I am offering, as I say, will help consumers.

It may prove to be an inconvenience for some attorneys, but those attorneys who will be inconvenienced are the ones who are not following the kinds of practices and recommendations of the bar association as are those of the profession who I think are doing an outstanding job.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Michigan reserves the remainder of his time. He has 10 minutes and 42 seconds remaining.

Who seeks recognition?

Mr. HOLLINGS addressed the Chair.

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

Mr. HOLLINGS. Mr. President, just in the minute or so that I have remaining, I ask unanimous consent to have printed in the RECORD the full text of this Monday edition.

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

[From the Washington Post, Mar. 20, 1995]

IN SETTLING WITH AIRLINES, THERE'S NO FREE RIDE; COUPONS FOR TRAVELERS, $16 MILLION FOR LAWYERS

(By Anthony Faiola)

When a number of the nation's major airlines agreed to settle a price-fixing lawsuit by offering passengers discount coupons on air fares, it looked as if the flying public was getting a plum.

But passengers soon discovered, after the coupons arrived in January, that there would be no free rides because the terms of the settlement limited savings on any one trip.

Meanwhile, the airlines—defendants in the class-action lawsuit that led to the settlement—found themselves with a wonderful marketing tool. Although the coupons had a total face value of $438 million, they could be redeemed only a few dollars at a time.

And the lawyers who represented the members of the class in the suit were the ones to make real money—$16,012,500.

The legal fees and the limited benefits to the flying consumers have led many travel and legal experts, including the federal judge in Atlanta who signed the settlement, to label this a ''lawyers' case.''

''Defendant and plaintiff attorneys have learned to fall in line with each other'' in class-action cases, said Cornish Hitchcock, an attorney with Washington consumer activist group Public Citizen. ''A sweet settlement deal for the defendants can be cut, and the plaintiffs can get their huge attorneys' fees, then everyone is happy. Everyone, that is, except for the class,'' he said. Hitchcock was among those who argued for lower legal fees in the case.

The 4.2 million plaintiffs in the airline case had little choice in who represented them. Thirty-seven law firms nationwide raced to file antitrust suits on behalf of air travelers, then went in search of a class of clients.

Five firms, in particular, came away with the most in fees, court documents showed. They included the offices of the four lawyers who chaired the steering committee representing the plaintiffs and the Atlanta firm that oversaw the administration of the case.

In Washington, the firm Cohen, Milstein, Hausfeld & Toll received $326,912,08. In Philadelphia, considered by legal experts as the power center of class-action firms, Fine, Kaplan and Black received $155,685.75; Cohen, Shapiro, Polisher, Shiekman and Cohen received $261,117.03; and Kohn, Nast, Savett, Klein & Graf received $382,277.14. In Atlanta, the firm Carr, Tabb & Pope received $504,980.16, according to court records.

Attorneys calculated the awards based on an estimate that 2.3 million travelers would request coupons. Instead, almost double that number responded, which led to lower awards for all plaintiffs.

FRUSTRATION FOR TRAVELERS

The coupons cannot be used for flights during certain blackout dates and cannot be pooled for significant discounts. The largest discount on a $240 ticket, for instance, is $10.

Travelers such as Adams Morgan resident Geraldine Triana, one of 4.2 million passengers who gathered years-old flight receipts in the hopes of gaining an award, said the case amounted to frustration and wasted time.

Triana, who flies primarily between Long Island and Washington on fares of less than $200, doubts she'll get much use from her four coupons, each valued at $25. To get a full $25 credit, she has to buy a ticket worth at least $250.

''Where is the justice in that?'' she said.

The coupons do offer sufficient incentive that consumers want to use them, making them an effective marketing tool for the airlines. In fact, Alaska Airlines, one of the few large carriers not named in the original case, asked to be a defendant when it learned of the coupon program and was accommodated.

''The airlines using those coupons are going to see substantial additional ticket sales because of them,'' said Louis Cancelmi, a spokesman for Alaska Air. ''We asked to be named in the case because, once we saw the settlement, we realized it was to our competitive disadvantage not to do so.''

Spokesmen for the other defendant airlines—American, Continental, Delta, Northwest, TWA, United and USAir—cited the court-approved agreement that provided the coupons and declined to comment further. Under the agreement, the defendant airlines did not admit fault. Eastern and Pan American World Airways, both now defunct as operating entities, also were among the original defendants.

In her Philadelphia office, Dianne Nast, one of four lawyers who served as co-chair of the plaintiffs' committee, said that the 4.2 million plaintiffs ''should be satisfied'' with what they got. Coupons, she said, ''are better than nothing.''

''Just because a settlement may benefit a defendant doesn't mean it won't benefit the plaintiff; that's not logical,'' said Nast, a partner in Philadelphia's Kohn, Nast, Savett, Klein & Graf. She now is working on class-

action cases against tobacco and silicon-breast implant manufacturers.

BEST JOB POSSIBLE

Nast said she and her colleagues expended thousands of hours of legal time wrangling against some of the best corporate attorneys in the business. Class-action cases, she said, remain the best way to bring together scores of people commonly wronged, but who could never gain retribution on their own.

''Considering the circumstances, we did the best job possible,'' Nast said. ''I don't feel the fees were too high. In fact, in this case, I would say they were low.''

The lawyers had asked for $24 million in fees and expenses. The federal judge in the case lowered that amount to slightly more than $16 million.

The case started in the shadow of Washington Dulles International Airport, where the Airline Tariff Publishing Co. (ATP) has its headquarters.

The company is owned by 30 domestic and international air carriers and was created by the airline industry to distribute fares to travel agencies through one database.

But in 1989, the U.S. Justice Department was alerted by reports in the aviation trade press of suspicions that the database was being used for electronic fare negotiations among its member carriers.

Mark Schechter, deputy director of operations for the department's antitrust division, said an investigation was begun in the summer of 1989. Schechter said the Justice Department believed the airlines were comparing fares through the computer system before they were listed on travel agents' computers.

For example, according to Justice Department interrogatories filed in connection with its case, United Airlines inserted a ''proposed'' fare into the ATP computer on Dec. 15, 1988, that would increase prices by $15 between Chicago and several cities. Two weeks later American, Braniff, Continental, Delta, Northwest, TWA, USAir and Piedmont, which later merged into USAir, also posted ''proposed'' increased fares in the computer, matching United's and essentially ratifying its increase. On Jan. 14 all these airlines implemented the suggested $15 increase.

On Dec. 21, 1992, the department filed a civil antitrust suit against most major airlines in U.S. District Court. The Justice Department settled its case with the airlines last March. The airlines agreed to stop using the database to compare fares but did not admit fault.

''This was a major case, probably the most important civil antitrust case brought since AT&T,'' Schechter said. ''It was hotly contested and hotly litigated, there were nine defendants out there and each of them had top legal talent, they were very well represented and ready for a fight.''

On June 28, 1990, long before the Justice Department settlement, lawyer Nast read about the department's investigation in the Wall Street Journal. She immediately asked her Philadelphia firm's researchers to begin investigating.

Dozens of other lawyers saw the Journal story too and launched their own investigations. In Washington, Philadelphia, Atlanta, San Francisco and more than a dozen other cities, firms specializing in class-action litigation rushed in.

''I had heard some things, you know, some hints at Washington parties, that this airline case was brewing,'' said Jerry Cohen, a Washington lawyer who was co-lead counsel on the case. Cohen is a former member of the Senate antitrust and monopoly subcommittee and his firm, Cohen, Milstein, Hausfeld & Toll, played a key legal role in the Exxon Valdez case. The tanker Exxon Valdez ran aground in 1989 in Alaska's Prince William Sound, spilling 10 million gallons of oil.

''But when we saw the Journal article, we assigned a couple of people to look into it, and we prepared a complaint. Before we filed, we talked to several other law firms to find out how they were going to handle it.''

By August, 37 firms had filed suits.

The attorneys, Cohen said, used a complicated formula to quantify the airlines' liability, and came up with a total of $3 billion.

''These lawyers don't waste their time on the small stuff,'' said Laurance Schonbrun, a San Francisco attorney who argued before the court that the plaintiffs' attorneys should be paid in coupons, not cash, because that's what they won for their clients.

When the suits were filed, attorneys listed specific individuals as plaintiffs. These plaintiffs were, in many cases, friends or pre-existing clients of the law firms, said Federal District Judge Marvin Shoob, who presided over the case in Atlanta.

The 42 named plaintiffs took home as much as $5,000 each, for a total of $142,500. They were the only members of the plaintiffs to receive money, court records show.

Judah I. Labovitz, also a co-chair in the case, said the 42 plaintiffs ''are more than just names on a piece of paper.'' His law firm's plaintiff was a longtime friend and client, Labovitz said. ''He dug up his travel records and gave a deposition. The entire class benefited from his actions, why shouldn't he get some money?'' Labovitz said.

In September 1990 the cases were consolidated in Atlanta and a steering committee was established to coordinate the efforts of the 37 law firms. Some of the largest and best-known firms became the leaders and Nast, Labovitz, Cohen and Philadelphia attorney Allen D. Black became co-chairs.

COUPONS, NOT CASH

Several factors pushed the parties toward a settlement with coupons rather than cash, attorneys for both the airlines and the plaintiffs said.

The airline industry was in financial chaos in the midst of a recession that would see it lose more than $10 billion over three years. If the case were won and cash settlements were huge, it could bankrupt the industry, lawyers for both the plaintiffs and the airlines agreed.

Meanwhile, the plaintiffs' lawyers faced the prospect of proving electronic collusion in front of a jury that might not have the patience for a technical trial potentially lasting three years or more.

''You've got to have a little common sense. All the airlines were in serious trouble at the time,'' Cohen said. ''They literally had no money. Eastern and Pan Am had already gone belly up, and Continental, Northwest and TWA were in serious trouble.''

But opponents, primarily consumer activists, cried foul. ''It would have been better for the plaintiffs if the lawyers took the case to trial,'' said Edward M. Selfe, a corporate attorney from Birmingham who filed a motion to stop the settlement on the grounds consumers should receive rebates, not coupons.

However, plaintiffs counsel had invested considerable time and effort in developing the case, with no guarantee they could win and recover even their costs, much less their legal fees.

$16 MILLION IN LEGAL FEES

So the settlement was reached: $438 million worth of coupons to an unknown number of passengers for up to a maximum of 10 percent of the cost of their air fares, and $16 million in legal fees to plaintiffs' counsel.

Each individual plaintiff, however, did not receive even as many coupons as originally expected because there were many more applicants than the settlement presumed, and there was a ceiling on the payout.

The plaintiffs' lawyers had estimated that 2.3 million people would seek coupons, Shoob said. The plaintiffs' attorneys formulated that number based on the advice of experts, and relying on the history of plaintiffs' response in similar cases.

The number of travelers responding came in at 4.2 million. Included were huge corporations, such as International Business Machines Corp. and AT&T Corp., which entered claims of more than $1 billion and ended up getting most of the coupons. However, AT&T and several other companies now say the coupon restrictions make them extremely difficult to redeem.

''Obviously, we were surprised,'' Nast said. ''We believe it was due to all the publicity the case received.''

The miscalculation had the effect of making the settlement appear more lucrative then it actually was, Shoob now said. The minimum payback per person worked out to $73 in coupons, with a limit per flight of a 10 percent discount. Earlier projections had put the minimum payback at almost $140 in coupons per person, he said.

''I based my approval on the belief that claimants would get much more back than they actually did,'' Shoob said. ''I believe [the attorneys made] an honest mistake—there was no attempt to purposely mislead the court. But it was a mistake nonetheless.''

Nast said: ''We looked at the historical response to this type of situation to calculate—but this was an extraordinary case. I feel it's a comment on how good a job we did for the class that so many people responded.''

Shoob said, ''in this case, even in the event of a cash settlement, chances are, each person in the class would have received an extremely small amount of money in comparison to the return to the lawyers.''

''I think [class-action] cases are absurd,'' he said. ''So many are generated by lawyers not to benefit the class, but to generate legal fees. The lawyers are just doing their job under the law. The flaw is with the law that allows it.''

Mr. HOLLINGS. The amount of money in that case referred to by the distinguished Senator in the justification for his amendment, the airlines case, with the total verdict of $438 million, that is where the lawyers got $16 million. There were 4.2 million plaintiffs. They had law firms racing all over; 37 law firms were racing around. They have all the law firms listed.

But rather than a third or 20 percent or 10 percent or 5 percent or 1 percent, it is less than 1 percent that the lawyers got.

Now, you have all of those clients in there. I knew that this particular fee, even though it sounded outrageous in the news story, was based in reason by the court. The court would not approve giving the clients $25 and giving the lawyers $16 million. That is the garish nonsense that you find going on as justification for product liability reform.

On that basis, if Senators want to vote on that basis not only for the amendment of the distinguished Senators from Michigan and Kentucky, but on product liability, let them do

that. But that is how extreme they have gotten.

Now, here is the case. I hope everybody will read about the 37 law firms and the 4.2 million plaintiffs and the $438 million obtained, to be divided up. And the lawyers, all those 37 law firms, got $16 million. I rest my case, Mr. President.

I hope you do not table our amendment. If we can get a good vote on this amendment, it will bring attention to the really fanciful nature of this entire exercise on product liability.

We have welfare reform, we have the budget, we have telecommunications, we have terrorism, we have a crime bill to come up, we have more work to do that is good work of national significance, rather than manufacturing amendments through halfway stories in the Washington Post.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator yields back the remainder of his time. There are 10 minutes 42 seconds remaining to the Senator from Michigan.

Who seeks recognition?

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. ABRAHAM. Thank you, Mr. President. I just will make several comments.

One, in the case the Senator from South Carolina and I have been discussing, I just will point out, again, this is a quote from the media, the judge in that case actually later said that he regretted having approved of the fees that were involved for the reasons that he believed they were inappropriate.

Again, my point is not to talk about excessive fees or fees that are inadequate. I have not yet encountered any attorney who says they did not earn the fees that they charged, and since they feel that way, my guess is they should not object to the requirements of this amendment, which would simply ask that prior to and following the conclusion of matters, accountings be made and the fees, as well as the hours involved, be tabulated.

I would also stress though, as I did earlier, the amendment provides a waiver provision so that those attorneys who feel this is too burdensome and cumbersome can at least seek to have their clients waive this right to have both prior- as well as post-litigation or settlement accounting occur.

But basically, again, Mr. President, I think that the thrust, at least of my underlying amendment, is one of disclosure, it is one of providing consumers with the right to know the kind of legal arrangements that they are getting into, and the right to know what has transpired and how the fees that they are paying will be structured.

I believe it is pro-consumer. I believe the only people who might find this inconveniencing are those attorneys who are not following the common practice that is outlined by so many legal organizations of calling upon attorneys to provide that sort of information.

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

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

AMENDMENT NO. 598 TO AMENDMENT NO. 597

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

The PRESIDING OFFICER. The pending business before the body is now the amendment by the Senator from South Carolina.

Mr. GORTON. Has all time for debate expired?

The PRESIDING OFFICER. All time has expired for the debate.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 598

The PRESIDING OFFICER. The question is on the motion to lay on the table amendment No. 598, by the Senator from South Carolina.

All those in favor of the tabling motion will vote aye, those opposed will vote no.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

Mr. FORD. I announce that the Senator from Nebraska [Mr. EXON] is necessarily absent.

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

The result was announced—yeas 94, nays 3, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—94

Abraham	DeWine	Johnston
Akaka	Dodd	Kassebaum
Ashcroft	Dole	Kempthorne
Baucus	Domenici	Kennedy
Bennett	Dorgan	Kerrey
Biden	Faircloth	Kerry
Bingaman	Feingold	Kohl
Boxer	Feinstein	Kyl
Bradley	Ford	Lautenberg
Breaux	Frist	Leahy
Brown	Glenn	Levin
Bryan	Gorton	Lieberman
Bumpers	Graham	Lott
Burns	Gramm	Lugar
Byrd	Grams	Mack
Campbell	Grassley	McCain
Chafee	Gregg	McConnell
Coats	Harkin	Mikulski
Cochran	Hatch	Moseley-Braun
Cohen	Heflin	Moynihan
Conrad	Helms	Murkowski
Coverdell	Hutchison	Murray
Craig	Inhofe	Nickles
D'Amato	Jeffords	Nunn
Packwood	Santorum	Stevens
Pell	Sarbanes	Thomas
Pressler	Shelby	Thompson
Pryor	Simon	Thurmond
Reid	Simpson	Warner
Robb	Smith	Wellstone
Rockefeller	Snowe	
Roth	Specter	

NAYS—3

Daschle	Hollings	Inouye

NOT VOTING—3

Bond	Exon	Hatfield

So the motion to lay on the table the amendment (No. 598) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I am generally a supporter of disclosure requirements, but I will vote to table the Abraham amendment for two reasons.

First I believe that the States are more familiar with the issues raised by this amendment and that it is inappropriate for us to take over this area of the law in a floor amendment which has not even been considered in committee.

Second, the amendment would impose a cumbersome new regulation on attorneys—not just in product liability cases, but in all cases in Federal court. Attorneys would have to send not one, but two notices of fees to each client in a case. That may sound simple, but the chief case that has been cited as the basis for this amendment was a class action brought on behalf of some 4.2 million individuals. That means, presumably, that 8.4 million separate notices would have to be mailed out in that case alone.

Moreover, the amendment would require attorneys to calculate hourly fee rates even in cases where the client is being charged on a basis other than hourly rates—such as a contingent fee or a flat fee. That means that every attorney would have to keep records of every hour spent on every case, even in cases where those hours are not the basis for the attorney's fees, and the actual basis for those fees is fully disclosed to the client. That is a huge new paperwork requirement, the cost of which would inevitably be borne not by lawyers, but by their clients.

I believe that we should avoid these cumbersome new requirements and leave requirements for disclosing attorneys' fees in the hands of the State governments unless and until a clear need is shown for the Federal Government to take over.

I also intend to vote to table the Brown amendment to revise rule 11 of the Federal Rules of Civil Procedure. The Rules Enabling Act delegates to the Supreme Court the power to prescribe rules of procedure for the Federal district courts. The courts have far greater expertise in rules of judicial procedure than does the Congress. Accordingly, I do not believe that we should step in and overturn the courts'

decision without hearings and without a clear showing of need.

VOTE ON MOTION TO TABLE AMENDMENT NO. 597, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the question now occurs on amendment 597, as modified, offered by the Senator from Michigan.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia [Mr. ROCKEFELLER] to table the amendment of the Senator from Michigan [Mr. ABRAHAM]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

Mr. FORD. I announce that the Senator from Nebraska [Mr. EXON] is necessarily absent.

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

The result was announced—yeas 45, nays 52, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—45

Akaka	Gramm	Moseley-Braun
Biden	Harkin	Moynihan
Bingaman	Heflin	Murray
Breaux	Hollings	Nickles
Bryan	Hutchison	Nunn
Bumpers	Inouye	Pell
Byrd	Jeffords	Pryor
Cochran	Johnston	Reid
Cohen	Kennedy	Rockefeller
D'Amato	Kerrey	Roth
Daschle	Kerry	Sarbanes
Dodd	Leahy	Shelby
Ford	Levin	Simon
Gorton	Lieberman	Specter
Graham	Mack	Thompson

NAYS—52

Abraham	Faircloth	McCain
Ashcroft	Feingold	McConnell
Baucus	Feinstein	Mikulski
Bennett	Frist	Murkowski
Boxer	Glenn	Packwood
Bradley	Grams	Pressler
Brown	Grassley	Robb
Burns	Gregg	Santorum
Campbell	Hatch	Simpson
Chafee	Helms	Smith
Coats	Inhofe	Snowe
Conrad	Kassebaum	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kohl	Thurmond
DeWine	Kyl	Warner
Dole	Lautenberg	Wellstone
Domenici	Lott	
Dorgan	Lugar	

NOT VOTING—3

Bond	Exon	Hatfield

So the motion to lay on the table the amendment (No. 597) was rejected.

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

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

The motion to lay on the table was agreed to.

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

So the amendment (No. 597) was agreed to.

Mr. DOLE. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 599 TO AMENDMENT NO. 596

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

The PRESIDING OFFICER. Amendment numbered 599.

Mr. BROWN. Mr. President, I believe the next item for consideration is amendment numbered 599, which is an amendment that I proposed which would restore the deterrence against bringing frivolous actions and frivolous lawsuits.

Mr. President, it is my personal feeling, and I believe the feeling of the distinguished senior Senator from Alabama, that this debate could be concluded fairly quickly, perhaps as short as 20 minutes on each side; and then it would appear that it is the will of Senators to move to a vote at that point.

Mr. President, rule 11 is a very important part of civil procedure. Rule 11 changed in 1983 to provided strong admonishment against attorneys bringing frivolous actions.

It was changed again in December of 1993. It was changed, unfortunately, not through a vote or deliberation of this body, but by our failure to act.

Tragically, that automatic change in the Federal Rules of Civil Procedure resulted in the gutting of the protection against frivolous actions embodied in rule 11. The new rule 11 now allows someone to allege facts, bring facts before the court without knowing that they were true or without having fully investigated the facts.

This amendment restores parts of the old rule 11 that more effectively deter frivolous action. I will be dealing with rule 11 in detail in a few minutes. I wanted simply to alert Senators that we will be moving to a vote on this, I believe, within 40 minutes or so. This vote is about discouraging frivolous action and frivolous lawsuits.

Our hope is that this amendment will play an important part in this bill, because stopping inappropriate actions and frivolous lawsuits is very much an essential ingredient, I believe, in reform of the judicial process. I yield the floor.

Mr. HEFLIN. Mr. President, I rise in opposition to the Brown amendment.

Let me first explain a little bit about the procedure, what happens regarding the Federal Rules of Civil Procedure, which include rule 11.

There has been controversy over the history of this country as to how courts ought to take care of its rule making authority. The prevailing view is that the judiciary—and this includes the States—has inherent power to determine its own rules.

However, Congress felt it had a role, and so it adopted the Rules Enabling Act by which rules of procedure would be changed by first having a committee appointed by the Judicial Conference of the United States, to study any proposed change or changes.

After the committee made its report to the Judicial Conference, which is a body composed of judges from all levels of the judiciary, the Judicial Conference would study any proposals and then make recommendations to the Supreme Court of the United States. Then the Supreme Court of the United States would consider the issue and make recommendations to Congress. Under the Rules Enabling Act, Congress has 6 months to either adopt the recommendations, to modify them, or to delete them.

This particular rule 11 that came up was submitted to the Congress and the 6-month time period expired prior to Congress taking any action, and so all of the proposed Rules of Civil Procedure, including rule 11, went into effect on December 1, 1993. We knew toward the end of the Congress in 1993 that if any changes had to be made, they had to be made before December 1, 1993.

If a Senator was interested in making a change to a rule, he or she could introduce a bill, but no bill was introduced proposing to change rule 11.

During that 6-month period in 1993 in the House or in the Senate, if there were reasons for change, a bill could have been introduced in the House or the Senate.

In all fairness to Senator BROWN, he said that he did not like rule 11, but he never took the steps to modify the proposed changes, and now he is now belatedly taking steps on this particular bill, which is unrelated and not germane to the pending legislation.

My colleague from Colorado raises issues about frivolous lawsuits and let me say that this has been considered by many concerned groups of people. The Brown amendment is completely opposed by the civil rights community. The Brown amendment is opposed by the Department of Justice. Six members of the Supreme Court approved rule 11 that is now in effect. Senator BROWN quoted from Justice Scalia's dissent. There are always going to be dissents over at the Supreme Court, but if you have a 6 to 3 vote in the Supreme Court of the United States, that is a pretty good vote.

As I have listened to the criticisms of the new rule 11 from Senator BROWN and others, I do not agree with them. I have before me a memorandum from the Administrative Office of the U.S. Courts which says:

I am writing to address criticism raised during the markup of H.R. 2814 that the amendments to Rule 11 of the Federal Rules of Civil Procedure will eviscerate the rule's effect on parties filing frivolous proceedings and papers.

The amendments to Rule 11 retain the rule's core principle to ''stop and think'' before filing: By broadening the scope of Rule 11 coverage and tightening its application, the amendments reinforce the rule's deterrent effect and also eliminate abuses that have arisen in the interpretation of the rule. Although the amendments strike a balance between competing interests, the changes strengthening the rule have been neglected by those critical of the amendments and need to be highlighted.

First, the amendments expand the reach of the rule by imposing a continuing obligation on a party to stop advocating a position once it becomes aware that that position is no longer tenable.

What they would like to go back to under the old rule, as I interpret it, would be to allow ''a party to continue advocating a frivolous position with impunity so long as it can claim ignorance at the time the pleading was signed, which could have been months or years ago.''

Second, the amendments specifically extend liability to a law firm rather than limiting the liability to the junior associate who actually signs the filing.

Third, the amendments specifically extend the reach of Rule 11 sanctions to individual claims, defenses, and positions, rather than solely to a case in which the ''pleading-as-a-whole'' is frivolous. Some court decisions have construed the rule to apply only to the whole pleading, relieving a party of the responsibility for maintaining a single or several individual frivolous positions.

So rule 11 that went into effect on December 1, 1993 was designed to strengthen this matter.

Fourth, the amendments equalize the obligation between the parties by imposing a continuing obligation on the defendant to stop insisting on a denial contained in the initial answer. Frequently, answers are general denials based on a lack of information at the time of the reply. The amendments impose a significant responsibility on the defendant to act accordingly after relevant information is later obtained.

It is also important to highlight the provisions of the rule that the amendments retain. A party must continue to undertake ''an inquiry reasonable under the circumstances'' before filing under the amendment. In those cases where a party believes that a fact is true or false but needs additional discovery to confirm it, the amendments allow filing but only if such ''fact'' is specifically identified. The provision does not relieve a party of its initial duty to undertake a reasonable prefiling investigation. In cases of abuse, the court retains the power to sanction sua sponte and the aggrieved party can seek other remedies, e.g., lawsuit for malicious prosecution.

The existing rule does not require a court to impose a monetary sanction payable to the other party. Instead, the rule does provide a court with the discretion to impose an appropriate sanction, including an order requiring monetary payments to the opposing party and to the court.

Now, as to the hearings that we had in the Judiciary Committee, the old rule 11—that is one that was in effect before December 1 of 1993—had language that said that signature to a pleading demonstrated that the pleading ''is well grounded in fact.''

Senator BROWN at the subcommittee hearings on July 28, 1993, grilled the chairman of the Rules Advisory Committee that had proposed to the Judicial Conference this aspect of the rule change.

Senator BROWN claimed that under the new rule 11, a party ''no longer has to research a claim and know that it is true.'' He feels that a party ''no longer has to know his facts'' before bringing a lawsuit.

Well, what Senator BROWN ignores from the testimony and the response the chairman of the committee, Judge Sam Pointer, gave is that the new rule 11 ''still calls for and demands that attorneys have made a reasonable investigation under the circumstances.''

As Judge Pointer demonstrated, oftentimes a party does not get all the facts until the discovery is finished, and the new rule does, indeed, require high standards and is not an egregious loosening of standards.

The point is that under this new rule 11, ''if a plaintiff is going to make an allegation that he does not have hard support for, the plaintiff should say, I do this on information and belief, and be under a responsibility to withdraw that or not continue to assert it, if after reasonable opportunity for discovery, it turns out there is no basis for it.''

Now, the new rule 11 has changes from the old rule in that if a violation regarding a pleading is found, then the court may impose sanctions.

Under the old rule, the language was that a court must impose a sanction if it found a violation of the rule.

As Judge Pointer demonstrated in his testimony, a court needs the flexibility or discretion to impose sanctions because a complaint, or for that fact an answer or motion to dismiss may contain a technical violation, but the rest of that pleading could be perfectly acceptable. Why, then, should a court be required to impose a sanction? Such discretion would not, in my judgment, giveaway to mass, irresponsible pleading.

Obviously, those who are purporting to change rule 11 raise the possibility that a party could intentionally bring a frivolous action and, upon a finding of such by the court, might escape a penalty. The response to that concern is that well, yes, there could be no penalty, but in that type of egregious intentionally frivolous pleading a court will most likely impose a sanction.

Under the new rule—

[I]f warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

Also, a court on its own initiative may begin a show-cause proceeding as to whether a party has violated the rule. This should take care of concerns by Senator BROWN that plaintiffs could irresponsibly plead, claim, et cetera. The court has its own power to initiate an inquiry as to whether rule 11 has been violated.

As the Senate can clearly see, this is a highly technical matter that we are being called upon to consider, and it is attempting to be amended onto an unrelated bill without the Members of this body having an adequate opportunity to study the issues. For us here in Congress to have to consider this amendment on an unrelated bill seems to me to be an irresponsible way of legislating.

So it is my opinion that we ought not to be involved in this at this time. The Judiciary Committee had hearings, and there was ample opportunity for action to be taken. But no action was brought forth through the form of a bill being introduced to make any changes to rule 11.

There are always efforts to look at matters and matters can always be considered by this body. But the Judicial Conference is designed and is much better equipped than this body to make the decisions pertaining to that matter.

It seems to me that it is just improper and an inappropriate time to bring this matter up at such a late stage as this. If there had been a real sincere effort, it could have been done within the 6-month time period allowed pursuant to the Rules Enabling Act. It seems to me that we ought not to be dealing with this amendment at this time on this unrelated bill.

It may be that a bill could be introduced later, if they wanted to, and at other times go through the process.

But I feel that the new rule is a flexible rule and has provisions that strengthen—not weaken—the efforts to prevent frivolous lawsuits. The new rule is expected to reduce the number of inappropriate motions requesting sanctions, thereby allowing courts to focus more attention on legitimate sanction requests.

Mr. President, let me read from Rule 11 as it now exists. This is about representations in a pleading.

By presenting to the court, whether by signing, filing, or submitting, or later advocating a pleading, a written motion, or other paper, the attorney or unrepresented party is certifying to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that it is not being presented for any improper purpose, such as to harass, or to cause unnecessary delay, or needless increase in the cost of litigation. The claim, the defenses, and other legal contentions therein are warranted by existing law, or by nonfrivolous argument for the extension, modification, or reversal of existing law, or the establishment of the new law. The allegation and other factual contentions have evidentiary support, and if specifically so identified are likely to have evidentiary support of a reasonable opportunity for further investigation or discovery. The denials of fact show contentions are warranted to the evidence, and, if specifically so identified, are reasonably based on a lack of information or belief.

This is strong language. I want to point out basically what the difference is. The current rule 11 allows a judge some discretion rather than making sanctions mandatory.

That is the guts of the rule, whether or not a judge ought to have some discretion pertaining to a matter or whether, on the other hand, it ought to be absolutely mandatory.

This is being opposed by the civil rights community and by a number of others.

I ask unanimous consent that a letter that was addressed to the Honorable George J. Mitchell, from the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Judge Alicemarie H. Stotler, be printed in the RECORD.

I ask unanimous consent that a letter from the Alliance for Justice relative to this issue also be printed in the RECORD.

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

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES,
Washington, DC, March 15, 1994.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR MITCHELL: I am requesting your assistance in opposing Senator Brown's amendment (No. 1496) to S. 4, the ''National Competitiveness Act of 1993.'' Senator Brown's amendment would change certain parts of the amendments to Rule 11 of the Federal Rules of Civil Procedure, which became effective on December 1, 1993. The Rule 11 amendments were submitted to Congress in May 1993 only after extensive scrutiny by the bench, bar, and public in accordance with the Rules Enabling Act.

Serious consideration of amendments to Rule 11 began about four years ago. The rule had been the subject to thousands of decisions and widespread criticism since it was substantially amended in 1983. In an unusual step, the Advisory Committee on Civil Rules issued a preliminary call for general comments on the operation and effort of the rule. It also requested the Federal Judicial Center to conduct two extensive surveys on Rule 11.

After reviewing the comments and studies, the committee concluded that the widespread criticisms of the 1983 version of the Rule, though frequently exaggerated or premised on faulty assumptions, were not without merit. There was support for the following propositions:

Rule 11, in conjunction with other rules, has tended to impact plaintiffs more than defendants;

It occasionally has created problems for a party which seeks to assert novel legal contentions or which needs discovery to determine if the party's belief about the facts can be supported with evidence;

It has too rarely been enforced through nonmonetary sanctions, with cost-shifting being the normative practice;

It provides little incentive, and perhaps a disincentive, for a party to abandon positions after determining they are no longer supportable in law, or in fact; and

It sometimes has produced unfortunate conflicts between attorney and client, and exacerbated contentious behavior between counsel.

The draft amendments broadened the scope of the obligation to ''stop-and-think'' before filing or maintaining a position in court, but placed greater constraints on the imposition of sanctions. The amendments were later revised by the advisory committee and the Standing Committee on Rules and approved by the Judicial Conference of the United States and then adopted by the Supreme Court, with two justices dissenting.

The amendments strike a fair and equitable balance between competing interests, remedy the major problems with the 1983-version of the rule, and should reduce both the extent of court-involvement with Rule 11 motions and the time spent on frivolous claims, defenses, and other contentions.

The amendments represent the end product of a rigorous public rulemaking process that worked as contemplated by Congress under the Rules Enabling Act. The issues were fully aired in a public forum. Interested individuals and organizations were provided, and responded to, opportunities to comment on the changes. The language of the amendment was meticulously drafted only after the Judicial Conference committees, which consist of prominent lawyers, law professors, and judges, had the benefit of this public examination.

Senator Brown's amendment to Rule 11 would undercut the Rules Enabling Act process frustrating not only the intent of the Act but also the participants in the rulemaking process, including the public and many advocates of Rule 11 change. Your leadership in maintaining the integrity of the Rules Enabling Act would be greatly appreciated.

Sincerely yours,

ALICEMARIE H. STOTLER.

ALLIANCE FOR JUSTICE,
April 26, 1995.

U.S. Senate,
Washington, DC.

DEAR SENATOR: The undersigned organizations urge you to oppose the changes to Federal Rules of Civil Procedure 11 that have been offered as an amendment to the Products Liability Fairness Act. This amendment poses a grave threat to civil rights and public interest litigation.

The proposed changes would roll back advances in Rule 11 that were recently enacted following careful and thoughtful discussion involving all concerned parties across the political spectrum. We know from experience that returning to the old Rule 11 will be particularly devastating to underrepresented Americans.

Under the old rule, threats of sanctions quickly became the standard ammunition in the arsenal of defense counsel. The result was an avalanche of satellite sanctions litigation that occupied a great deal of judicial resources and was often as frivolous as the litigation Rule 11 was designed to eliminate.

The old rule had a particularly harsh effect on civil rights and public interest organizations and their clients. As the Judicial Conference's Advisory Committee on Civil Rules found:

(1) Rule 11 . . . has tended to impact plaintiffs more frequently and severely than defendants; (2) it occasionally has created problems for a party which seeks to assert novel legal contentions or which needs discovery from other persons to determine if the party's belief about the facts can be supported by the evidence; [and] (3) it has too rarely been enforced through nonmonetary sanctions.

Noting these concerns, the Judicial Conference offered amendments that made sanctions permissive; created a 21-day ''safe harbor'' period; and made clear that the purpose of sanctions was to deter frivolous claims. These amendments garnered broad support among judges, bar associations, legal scholars, litigators and the Department of Justice, and were ultimately adopted by Congress.

The safe harbor provision was a particularly significant and welcome change. Once a party raised a Rule 11 objection to a pleading, the opposing party has 21 days to consider the objection and, if warranted, withdraw the challenged claims—drawing the courts into further litigation.

The Rule 11 amendment threatens to roll back these achievements and resurrect the very problems that prompted the Judicial Conference, the Supreme Court and many others to take action. The amendment would have an especially heavy impact on plaintiffs, placing the cost of litigation beyond the reach of ordinary Americans, particularly public interest and civil rights litigants. It compromises the very notions upon which our legal system is based—fairness and equity.

We urge you to reject any amendments to Rule 11.

Respectfully,

NAN ARON,
Alliance for Justice.
LOU BOGRAD,
American Civil Liberties Union.
LESLIE HARRIS,
People for the American Way Action Fund.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I want to commend the distinguished Senator from Alabama for his thoughtful comments. He is a delight to work with even when we do not always see eye to eye. This is an area where we do not see eye to eye.

I wanted to comment briefly on his remarks. First of all, there was the implication that these suggested changes have only been considered for a short period of time and we have not had a real opportunity to look at what effect they would have on the rules. That would not be my assessment of them. Let me explain why.

The rule changed originally in 1983 from having permissive sanctions for a violation of the rule to having mandatory sanctions for a violation of the rule. That is, when someone has brought a frivolous action prior to 1983, the rule was as it is now: that is, you did not have to have mandatory sanctions.

So the fact that this has not been tried before really does not square with our experience. The fact is we did try this permissive approach to sanctions prior to 1983. I think one could reasonably ask what were the results of that experiment when the sanctions were not required? There was a study done of that, and it studied the reaction of practitioners and judges in changing from permissive to mandatory sanctions.

Here are the results of that study.

I might mention that this study was conducted of both lawyers and judges in the northern district of California, which is part of the ninth circuit. The questionnaire was sent to 17 judges, 7 magistrates, and 107 attorneys, all of whom had been involved in rule 11 proceedings, so these were not inexperienced people. They were people who had understood the process and worked with it.

Sixty-eight lawyers, 46 percent of them, responded; 12 judges and magistrates, 50 percent, responded to the survey, so there was a good response. Here is the response: 46 percent of the respondents indicated that they had engaged in additional prefiling factual inquiry when the sanctions were mandatory. That is, when sanctions were mandatory, it resulted in the attorneys doing additional prefiling factual inquiry.

Now, if you favored more factual inquiry before filings are made, you are going to want mandatory sanctions because that is what mandatory sanctions resulted in. If you do not care about the additional prefiling inquiry, if that is not one of your objectives, then you will not want the mandatory sanctions and you will want the rules as they currently stand.

The survey also indicated that 33 percent indicated additional prefiling legal inquiry when the rule in effect employed mandatory sanctions. That is, before they filed, they did additional work to make sure they were right on the law before they filed.

Is that not what we want? Is that not what we should be hoping for, that people take the time to find out what the facts are and find out what the law is before they bring the lawsuit?

The survey indicated clearly that having sanctions required resulted in additional legal work and additional factual work before lawsuits were brought. That is the essence of mandatory sanctions and mandatory sanctions are the essence of this amendment.

So the suggestion that this is some wild idea that has never been tried does not square with the pre-1983 and post-1983 experience. The fact is we had permissive sanctions prior to 1983, and it resulted, at least according to the survey, in less legal research before you filed and less factual research before you filed.

Mr. President, it was alleged earlier that the issue of rule 11 could have been brought up earlier, but it was not, somehow implying that the people who are concerned about the gutting of rule 11 had been dilatory.

Mr. President, let me be very clear about that. I did introduce a bill, but that bill was not brought up for a vote.

What happened is that the Supreme Court transmitted to us the rule changes and made very clear in that transmittal that they were not necessarily endorsing them—let me read it because that is a serious comment, a serious charge. The letter from the Chief Justice of the Supreme Court, William Rehnquist reads:

> Transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

It cannot be more clear than that.

The reality is that this was not voted on before, and the reason it was not voted on before was because we could not get it put on the agenda and we could not get a recorded vote. But a bill was introduced, and I did do all I knew how to have the issue come before the Senate. That is why it has to be brought up here.

Now, when you do not allow a vote on a bill, to say somehow the proponents of that position have been dilatory I think raises real questions. What actually happened here is that these changes became law because we did not have a vote. And the Supreme Court's own documents say that their transmittal of it does not necessarily mean they agree.

Now, Mr. President, for those who have read the report, Justice White also commented on this, and he made a very important point. He made a point that the practice of the Court has generally been—except for two Justices, the practice of the Court has generally been not to interfere with this process, to simply transfer proposed changes on, because they have some questions as to whether or not it is a proper role for the Court to draft these changes.

Justices felt so strongly about this that three of them did dissent, which is highly unusual in this matter, and let me read to the Senate from that dissent. This is a dissent by Justices Souter, Thomas, and Scalia. All three of them dissented. Remember, Justice Rehnquist indicated it was not necessarily endorsement; they passed it on, and remember Justice White's comments as well. But here is a quote from the dissent.

> In my view, the sanctions proposed will eliminate a significant and necessary deterrent to frivolous litigation.

That is a direct quote out of the Justice's comments.

The dissent goes on:

> Under the revised rule, parties will be able to file thoughtless, reckless, and harassing pleadings secure in the knowledge that they have nothing to lose.

Mr. President, that is it in a nutshell. If we fail to address this question, it is very clear what the new rules do. Let me read what he said.

> Under the revised rule, parties will be able to file thoughtless, reckless, and harassing pleadings secure in the knowledge that they have nothing to lose.

Now, Members of this body are going to have a chance to go on record to see whether or not they favor allowing the filing of ''thoughtless, reckless, and harassing pleadings secure in the knowledge that they have nothing to lose.''

Lastly, Mr. President, it was suggested on this floor that there are people who would object to my motion.

Let me assure this body I have personally sought out the groups that were discussed. I have called them repeatedly. I have asked for meetings. I have asked for their suggestions. They have not been willing to respond or meet with us. And this happened not just once but on many occasions.

If Members have questions about this amendment, I hope it is not on the basis that this Senator was not willing to go out and ask for advice, was not willing to contact the parties that might have concern, and was not willing to try and work with them, because I did. I did ask for their advice. I did offer to work with them. And as a matter of fact, the measure that is before the Senate is not a full restoration of the old rulings but willingly adopts a number of the measures that were proposed.

Mr. President, I could not come to this body and acquiesce, as the dissent says, in revised rules that will enable parties ''to file thoughtless, reckless, and harassing pleadings'' or acquiesce in allowing them to do so ''secure in the knowledge that they have nothing to lose.'' That would be wrong. And these new rules are wrong.

Now, it has been suggested that this amendment will eliminate a judge's discretion with regard to sanctions. The facts are these. The old rules and the amendment that I offer this body does restore the requirement that you have sanctions when someone is guilty. This is not a game where you blow the whistle and say start over. When you are wrong and your actions impede the process in the court, I think sanctions are important. But to suggest that we eliminate judge's discretion is not accurate. The judge retains discretion under the rules to decide what type of sanction is appropriate as well as how substantial the sanction is.

Mr. President, I say that because I think it is important to take care of the questions that were raised.

I simply want to ask the body three questions that I think come full circle on this issue of frivolous lawsuits and capture the essence of it.

Should filings be grounded in facts or not? If the Members of this body feel filings in Federal court should be founded in facts, they should vote for this amendment. If they do not think it is necessary that the filing should be founded in facts, they will want to vote ''no.''

Two, should sanctions be required if you file frivolous actions? I believe if you file frivolous actions and they are found to be frivolous actions that sanctions should be required. But if you do not think there should be sanctions if you file frivolous actions, then you will want to vote ''no.''

Mr. President, finally, should an injured party be compensated for the costs or not? That is, let us say someone files a frivolous action, a party is injured because they have to respond and they have to pay for attorneys' fees and expenses. The question before us is, should the injured party be compensated for costs or not?

I think they should be. But if you do not think they should be, or if you think that priorities should be given to having the sanction go to the court and not to the injured party, which is what the new rules give priority to—the new rules give priorities to having the sanction, if there is any, go to the court instead of the injured party. If you think

the injured party should not be compensated or that should be the low priority, then you are going to want to vote ''no.''

Mr. President, the summation of the concern of the Justice who dissented in the transmittal closes with this quote.

It takes no expert to know that a measure which eliminates rather than strengthens a deterrent to frivolous litigation is not what the times demand.

Mr. President, it cannot be said better than that. If Members of this Senate think that our times demand that you ought to eliminate sanctions for frivolous action, then vote no. But I agree with the Justice when he says:

It takes no expert to know that a measure which eliminates rather than strengthens a deterrent to frivolous litigation is not what the times demand.

Mr. President, it is wrong to bring frivolous actions. It is wrong to file and not know the facts. It is wrong and I believe personally it is unethical for an attorney to bring frivolous actions before our courts. That is what the question is in this amendment. Do we favor frivolous filings or do we think there ought to be some sanctions for them?

I yield the floor, Mr. President.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you very much.

Mr. President, the Senate is currently engaged in what is, in my opinion, a constructive debate on the subject of product liability. The pending amendment, unfortunately, is destructive. It is destructive, certainly, of the relationship between the Congress and the courts, a relationship established pursuant to the Rules Enabling Act, that has worked and is working. And it is destructive of efforts to craft a product liability bill under the guidance of the Commerce Committee.

Mr. President, the fact is that the Brown amendment is, as you can no doubt tell from the ''legalistic'' nature of the debate, a Judiciary Committee issue. To the extent that this issue should be taken up and debated, it should be done under the auspices of the Judiciary Committee.

I know the distinguished Senator from Colorado feels strongly about this. But the question is whether or not it belongs as part of our effort to address the issue of product liability reform. I want to strongly express my opinion that it does not. This amendment does not belong on a Commerce Committee bill.

In the first instance, Mr. President, the whole argument that we should make rule 11 sanctions for the filing of frivolous pleadings mandatory—and overturn what was established pursuant to the Rules Enabling Act, and what has been accepted by the legal community—presumes that there is a single definition of what is frivolous.

I submit to my colleagues that there is no single definition of what is frivolous. Indeed, in many instances, what one person may consider to be frivolous another might not.

I would remind my colleagues that there have been instances in our history, instances that we look back with some pride at this point, which, at first blush, might have been considered frivolous claims. Under a mandatory sanctions regime similar to the one being proposed by the pending amendment, those cases may not have ever been brought, due to the chilling effect of mandatory sanctions. These novel, but legitimate, cases may never be given an opportunity to be heard if this type of amendment were to be passed willy-nilly, without the reasoned consideration that I believe it ought to have.

I remind my colleagues that it is often necessary to come up with novel theories in cases in the areas of civil rights and discrimination cases. Rule 11, as amended, reduces this incentive to filing novel pleadings. If you think back in the history for a little bit, I think this issue becomes clear. When Thurgood Marshall filed the Brown versus Board of Education case, to challenge the notion of ''separate but equal,'' the plaintiffs relied a great deal on psychological arguments—the so-called Brandeis brief. The plaintiffs in Brown relied on psychological and sociological evidence that proved the devastating impact our separate educational systems were having on the educational and human development of minority youths. Who is to say that at first impression someone might have said, ''Well, this is a silly argument. This is a silly idea.'' Who is to say that Thurgood Marshall might not have been intimidated from ever bringing the Brown case under a mandatory sanctions regime.

But because there was not the prospect of mandatory sanctions, because Linda Brown could file her novel claim without the threat of satellite litigation over whether the claim was frivolous, the doctrine of separate but equal was struck down. I could cite several examples of that sort of thing happening.

And so I believe that it makes sense for Congress to allow the court discretion in sanctioning parties for the filing of frivolous pleadings.

Mr. President, Congress has established a procedure to amend the Federal Rules of Civil Procedure, and that procedure is called the Rules Enabling Act.

Under the Rules Enabling Act, the Judicial Conference appoints a committee to consider proposed changes to the Federal rules. The committee recommends any necessary changes to the Judicial Conference, which then studies the issue and then decides whether or not to transmit those proposed changes to the Supreme Court.

The Supreme Court then decides whether or not to transmit those changes to Congress, to us, and then we then have 180 days either to reject or modify those changes. If Congress does nothing, then the changes go into effect.

Mr. President, the changes to rule 11 that Senator BROWN opposes were adopted by the Supreme Court on April 22, 1993. Congress had until December 1, 1993, to reject or modify the rule 11 changes. The Senate Judiciary Committee, on which I served with Senator BROWN, held a hearing on this issue on July 28, 1993. Yet in that time Congress took no action to reject the rule 11 provisions. I believe that Congress should take no action now.

There is no evidence to indicate that the revised rule 11, which will be thrown out by this amendment, has had an adverse impact on Federal litigation. Preliminary indications are that it has produced cost savings by decreasing the amount of ''satellite litigation''—litigation on the side—as to what is frivolous, and by encouraging parties to withdraw frivolous pleadings within the 21-day safe harbor.

It is not as though the 1993 amendments to rule 11 completely repeals the rule. The amendments gave attorneys the 21-day safe harbor in which to withdraw challenged pleadings and made sanctions discretionary in the judges, not mandatory.

In addition, sanctions would normally be paid to the court in the form of a fine, rather than to opposing counsel in the form of compensation.

Mr. President, these changes have been strongly supported by the civil rights community. As I stated earlier, it is often necessary to come up with novel theories in order to pursue civil rights cases. This proposed change, I think, would have an extremely detrimental effect.

In fact, I have a correspondence here from the NAACP Legal Defense Fund in which they state that, ''The Brown amendment would be extremely detrimental to civil rights litigation.''

But, again, to get back to what the studies say, the studies back up the claim that the rule, as amended, is working.

A Federal Judiciary Center study demonstrated that, under the mandatory sanctions regime, sanctions were imposed in a disproportionately higher percentage of civil rights cases than in tort or contract cases. Inherent in this problem, of course, is the vagueness of the term ''frivolous.''

In the same study, a group of judges asked to study a complaint divided evenly over whether or not the complaint was frivolous, prompting one commentator to observe that ''one man's frivolous complaint is another man's serious question.''

And so, Mr. President, I would argue this afternoon that while the Senator from Colorado has obviously a concern in this area, this is the wrong forum and the wrong time. He spoke about the timeliness of the issue. This is the wrong time to take this issue up, and

certainly this is the wrong bill on which this issue should be taken up.

If, indeed, further changes, further debate about whether or not judges should have discretion with regard to rule 11 issues, if that debate is to happen, then it should happen in the context in which we can make a judgment about it that is a sensible judgment and not just a rush to judgment.

I submit to my colleagues that the effect of this amendment would not only be to limit the kind of cases that can be filed but also to limit the court's discretion, because in this instance, with this amendment in place, all that a judge could do would be to choose an either/or—either the case is frivolous and thrown out altogether, or he has to apply mandatory sanctions.

That is not the direction in which to go. That is going to increase the cost of litigation. That is not going to help the process to work, and certainly I come back to my original point, that will then create a further imbalance and a further disruption in a relationship that has been established giving the courts a process for deciding on amendments to the Rules of Civil Procedure. That relationship will have been greatly impaired by this kind of rush to judgment.

So I reluctantly, again—understanding that I serve on the Judiciary Committee with the Senator from Colorado—submit to my colleagues, at this point in time, on this legislation, this amendment is ill founded, and I ask my colleagues to reject it.

Thank you.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I say to the Senator from Iowa, I am going to be literally 2 minutes.

I just want to explain the position of the manager of the bill on this, and for the benefit of my colleagues who are listening to this debate and their staff who are listening.

We are now considering an amendment of the Senator from Colorado, Senator BROWN, that tries to repeal part of the Federal Rules of Civil Procedure dealing with rule 11 and the way it serves to inhibit so-called frivolous pleading.

This rule was modified as a result of action taken in 1993 following the work of the Federal Judicial Conference. I have listened to the concerns expressed by the Senator from Alabama and the Senator from Illinois, and others, pointing out this amendment is outside the scope of the bill before us, which is the product liability bill. From my previous tabling motions and votes, I think my colleagues know that I am dead serious about trying to keep this bill limited to the bill, unloaded, unadorned with amendments that are not directly related to it.

I think that every Senator would agree that frivolous lawsuits should be curbed, but I just want to say that at the proper time, I will move to table the amendment. It was received very recently and one would hope there could be full hearings on the amendment. I wanted people to understand what my plan was.

Mr. BROWN. Will the Senator yield?

Mr. ROCKEFELLER. Of course.

Mr. BROWN. Mr. President, I just simply will say to the Senator, I am very sensitive to the remarks he made. I understand fully his concerns. He has a very important bill that he has brought forward. I want to assure the Senator that it would be the last thing I would want to do, to somehow burden his bill so that it could not pass. I want to assure the Senator, in the event it is adopted but proves later to be a burden for the Senator in terms of getting his underlying measure passed, that I will work with him in that regard.

Mr. ROCKEFELLER. I am thoroughly grateful to the Senator from Colorado.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, when is it time to take up an amendment in the Senate? When is it appropriate to discuss any amendment? Everybody knows the rules of the Senate. Almost any time in the Senate is a time to discuss anything that you can get before the body. Particularly in the case of this approach, it seems to me very appropriate now because we are talking about an underlying piece of legislation that is basic to making the courts a more effective tool for the settlement of disputes.

In the particular case of the underlying piece of legislation, it is to establish some standards in the courts so that those cases that are going to be considered by the courts will have some continuing thread running through them from State to State to make sure the cases are fairly heard. And this issue that is before us, that is presented by Senator BROWN, is such an amendment as well, an amendment that is going to make the Federal courts a more effective body for the determination of disputes.

It has become otherwise because courts can be very easily loaded down with frivolous suits. The Brown amendment, which I support, is about making the courts serve the intent of the Constitution writers, to be an impartial body for the settlement of disputes, but not just any suit that might come to people's minds, very serious suits.

So I want to associate myself with this amendment, and I want to say to my dear friend from Alabama, we very seldom disagree. This is one of those times because I think it is time now to restore the effectiveness of rule 11. A strong, effective rule 11 is one of the most important tools that the courts have to fight frivolous, baseless, and even sometimes harassing lawsuits.

A strong effective rule 11 preserves judicial resources for litigants who truly need access to our court system, and to give a swift action against frivolous lawsuits and claims is, in the end, going to save time and going to save money and, by the way, that happens to be taxpayers' dollars, and it is going to, most importantly, promote public respect for the integrity of the Federal courts.

Now, on the other hand, the current version of rule 11, the one that Senator BROWN wants to modify, the current version is of little value as a deterrent to baseless lawsuits. It actually allows attorneys to file allegations without knowing them to be true. It allows lawyers to make assertions without having any factual basis and before any research is done.

In short, the current version of rule 11 encourages the kind of baseless suits and claims that rule 11 was originally enacted to prevent.

The current rule eventually says ''Sue first and ask questions later.''

Senator BROWN's amendment puts teeth back into rule 11. It does so by making sanctions for frivolous suits mandatory, as they once were. In fact, Mr. President, rule 11 was amended years ago to make sanctions mandatory because rule 11, up to that time, was ineffective when sanctions were discretionary, as they are under the current version of the rule.

This amendment thus forces people who come into court to present the facts and to present the law in a reasonable and honest way. It deters frivolous claims and frivolous suits by denying litigants the opportunity to overreach with unresearched facts and to shoot for the Moon with unresearched law.

This amendment also provides the courts with a variety of tools to defer frivolous suits, from attorney's fees and expenses to court penalties to nonmonetary sanctions. It also accounts for the innocent party who has to spend time and money defending against baseless claims, which the current version of the rule fails to do.

This amendment would enable the court to make the moving party whole for the money spent defending against frivolous lawsuits or claims.

Let me use a very specific example. The milkshake case that Senator HATCH talked about yesterday. A driver, as we recall, bought a milkshake at a McDonald's restaurant and placed it between his legs. When he reached for something, he squeezed the milkshake and it spilled into his lap. He became distracted and drove into the car of another driver who sued the milkshake purchaser and McDonald's. His attorney's theory was that McDonald's failed to warn the driver of the danger of eating and driving at the same time.

Now, in reality, he was after McDonald's deep pocket because the driver who caused the accident was uninsured. This case was thrown out of trial court but was appealed up to the New Jersey Supreme Court—consuming, if we can believe this, 3 years of the court system's time, and thousands and

thousands of dollars of McDonald's money for defense of a baseless action.

Now, when McDonald's asked for reimbursement for these fees, the judge refused, saying of the plaintiff, ''He's creative and imaginative and should not be penalized for that.''

Now, how ridiculous can we get when we talk about frivolous suits? This case shows that far from discouraging frivolous litigation, the current rule actually encourages it.

Senator BROWN's relatively modest changes will restore the deterrence value of rule 11 and will have a positive impact on the ability of the Federal courts to deal with the ever-increasing onslaught of litigation, because cases delayed is justice denied for some people who have a legitimate suit.

I support and I ask my colleagues to support the needed change suggested by Senator BROWN.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have sought recognition to have a brief colloquy or discussion with the proponent of this amendment, the distinguished Senator from Colorado, Senator BROWN. I have already talked with him about the matter, and I think it is useful to make it a matter of record as to the meaning of this amendment, which I think is reasonably apparent from the language.

There is always a consideration as to legislative intent as derived from these discussions, but I think that it is especially appropriate when we have an amendment to have the view of the author of the amendment.

As I understand the amendment, it essentially restores the old rule 11 which was in existence prior to its amendment. In general terms, is that true?

Mr. BROWN. Yes, it restores the rule that was in effect prior to December 1, 1993.

Mr. SPECTER. As I understand the interpretation of the old rule, it provided some reasonable flexibility with respect to the imposition of sanctions. My question to Senator BROWN is, does his amendment leave it to the discretion of the court as to what sanctions would be imposed?

Mr. BROWN. It does leave to the discretion of the court as to what sanctions are appropriate.

Mr. SPECTER. So that there is no requirement that there be an imposition of attorney fees or a loser-pays rule for a violation of the rule arising from this amendment to rule 11?

Mr. BROWN. That is correct.

The fact is, in the past, before December 1, 1993, there were occasions on a number of times when the judges would find that it would be inappropriate to award those fees although they found—

Mr. SPECTER. It would be appropriate?

Mr. BROWN. It would not be appropriate to award those fees, even though they did find a frivolous action.

Mr. SPECTER. Although the language is mandatory that there has to be some sanction, the scope of the sanction is up to the judge? That is, it is discretionary with the court?

Mr. BROWN. That is correct.

Mr. SPECTER. And the amendment does not require that attorneys fees be paid or that the rule of loser pays be a consequence of a violation of the rule under the amendment that is being offered?

Mr. BROWN. That is correct.

Mr. SPECTER. Mr. President, this, I think, is something which is important to have clear, which we have now clarified.

It is my sense that the adoption of the tightening provisions by Senator BROWN achieves a purpose of further discouraging frivolous litigation. That is already discouraged to some extent, under the existing rule 11, but it further discourages frivolous litigation.

There is legislation in one of the bills passed by the House which would impose the loser-pays rule, which is not in the House product liability legislation, but their companion bill and it might be applicable to all litigation so that it might apply to product liability cases.

It is my sense, given the concern about whether there is frivolous litigation or the extent of frivolous litigation, that there is merit to try to reduce frivolous litigation to the extent that we can, and to discourage some more drastic, draconian measure, which I think would be presented by a loser-pays rule.

The United States has had a tradition throughout the judicial experience we have had, that a loser-pays rule is not appropriate for our society. Without getting into the pros and cons and the extent of what may or may not be the rule in Great Britain, loser pays has not been our rule.

My experience as a practicing attorney has demonstrated to me that we ought not to make that kind of a drastic rule which would, in effect, close the courts.

What Senator BROWN has done here in proposing a tightening of the rule against frivolous lawsuits, it seems to me, would tend to discourage any more drastic approach in this field.

I wonder if my colleague from Colorado would agree with that generalization?

Mr. BROWN. I might say that I concur in the view of the Senator.

It seems to me if there is a reasonable and a fair procedure to discourage frivolous actions in place, that will act as the strong deterrent to go to the loser-pays provision that, for example, England has incorporated.

On the other hand, if the rule stays without significant restrictions against frivolous lawsuits, my guess is there will be much greater strength in this country of movement to go to loser pays.

Mr. SPECTER. I thank my colleague. Moving on to the one other provision I wanted to discuss, with respect to the knowledge of the attorney who prepares the pleadings.

As I understand the amendment of Senator BROWN, and I pose this question to my colleague from Colorado: does the amendment permit a good-faith interpretation as to what the attorney for the plaintiff knows; that it is to the best of the person's knowledge, information, and belief, as the language says, formed after an inquiry, reasonable under the circumstances.

So in essence, it is a good-faith representation by the attorney who signs the pleadings.

Mr. BROWN. Indeed, that is correct. Rule 11 before and after my amendment allows filings for which the party has a reasonable belief that it is true. The basic notice pleading system is not affected. One can still make a general, encompassing pleading, and then conduct discovery.

I might add, the proposals in the new rule which were meant to discourage rule 11 proceedings are retained in this amendment. In other words, 21-day safe harbor that is part of the new rules, I retain.

What that does is require someone who is going to bring rule 11 proceedings to identify what they think is frivolous, then allow the person who has brought the action to correct that within 21 days, and indeed if they do it ensures that they are totally free from sanctions.

That safe harbor provision, that I think is protection against rule 11 proceedings, was retained. I retained it basically because I thought that part of the change seemed to have merit and could be helpful.

Mr. THURMOND. Mr. President, I rise today in support of the amendment offered by my good friend from Colorado, Senator BROWN. This amendment is appropriate to restore rule 11 of the Federal Rules of Civil Procedure to its proper role. Rule 11 is an important weapon to prevent the filing of frivolous claims and contentions in Federal courts. Significant alterations to rule 11 went into effect on December 1, 1993, and several of these changes are not desirable.

This is not an issue of favoring one party or group over another, but relates to the standards of veracity which apply to all advocates in Federal courts. The issue is whether we in the Congress are going to accept changes in rule 11 which lower the standards that attorneys must satisfy when filing claims and assertions in Federal court.

This is an issue which is of importance to the American people, too many of whom already hold lawyers and our system of justice in low regard. The Congress is ultimately responsible for both the laws and the procedures under which our Federal courts operate. We simply should not accept the

lower standards in Federal courts which are made by the 1993 changes to rule 11.

The amendment by Senator BROWN will correct undesirable changes in rule 11, while maintaining other changes in the rule which improve the administration of justice. The most critical correction made by the Brown amendment would require all factual contentions made in writing to a court to have evidentiary support or be well grounded in fact. The 1993 changes in rule 11 permit a party to make contentions which are likely to have evidentiary support after further investigation or discovery. It is important to correct this change in rule 11 to prevent litigants from making broad assertions in the hope that they will be able to support them through future discovery. On the other hand, I am pleased that Senator BROWN agreed to my suggestion to incorporate the long-standing standard that contentions must be well grounded in fact, because requiring every contention to have evidentiary support prior to discovery might be too high a standard and preclude claims and assertions that should be permitted.

Mr. President, I consider the Brown amendment to be desirable to restore the standards of rule 11. I urge my colleagues to support this amendment.

Mr. SPECTER. Mr. President, I would further inquire of my distinguished colleague from Colorado, whether the legislative intent here is to allow discovery as to matters that a plaintiff could not know about? So that when there is language here which says that, ''by presenting to the court * * * an attorney * * * is certifying * * * the allegations and other factual contentions have evidentiary support or are well-grounded in fact,'' if a plaintiff makes representations to the attorney which the attorney has reason to accept, that that would be a sufficient evidentiary basis for the allegations in the complaint?

Mr. BROWN. Yes, I believe the Senator has said it correctly. All rule 11 requires is an objectively reasonable belief that it is true. Certainly the case the Senator has outlined would fit that.

Mr. SPECTER. If there is something which plaintiff does not know about, which the attorney does not know about, there would be an opportunity for discovery to ascertain facts which are not within the knowledge of the plaintiff before there could be a challenge that there was a violation of rule 11?

Mr. BROWN. It is my understanding of the workings of this rule that it is quite clear that you can still make general encompassing pleadings and then conduct discovery.

Mr. SPECTER. Because a plaintiff would know on many matters what had happened, but if there were some technical matter, some defect in a mechanism, for example, in a product, that could not be within the knowledge of the plaintiff, it might require some discovery. But you have to state a sufficient claim to withstand a motion to dismiss, or perhaps just notice pleading. There would be an opportunity for an attorney to undertake discovery before there would be a basis for seeking sanctions under rule 11?

Mr. BROWN. Yes. It would be my feeling that this could well come under the general pleadings and all it would require is a general belief it was true. And it would, under those circumstances, allow the discovery.

Mr. SPECTER. I thank my colleague from Colorado. It is my intention to support this amendment and I do so because I think the experience under the old rule—if I might ask the specifics of Senator BROWN, when was the old rule in effect specifically?

Mr. BROWN. The provision that required sanctions if indeed someone had made frivolous filings was adopted in 1983 and lasted through December 1, 1993.

Mr. SPECTER. Within the 10-year period, I think that rule had sufficient flexibility to deter frivolous suits but was not so rigid and burdensome as to make it impossible to work in a reasonable fashion. And by returning to the old rule, which had been in effect for that period of time, it is my sense that there will be a tightening of the legal procedure and that it will make an improvement and satisfy those who are concerned about the filing of frivolous lawsuits.

It is my sense generally that in seeking congressional changes in rules governing judicial proceedings that we have to proceed with substantial caution. In my comments on Monday I pointed out some of my experience. As a practicing lawyer, I represented both plaintiffs and defendants in personal injury cases and had a major piece of litigation, which I had discussed on Monday, and have a sense that, as we have had accretion or encrustation by the courts since the early 19th century on the rules of law, where the cases are very, very carefully analyzed and considered—I have read many of those cases personally in connection with the litigation which I handled many years ago, described in some detail in my earlier presentation—that the courts have a much better opportunity to handle changes in the law than we do in Congress, where frequently only one or two Senators may be present at a hearing and our markups do not have the kind of careful and close analysis of an issue which judicial decisions have.

So that when Senator BROWN seeks to return to a rule which had been in effect for 10 years, which tightens the procedures and which may well foreclose a more drastic or draconian change on loser pays, I think it is worth enacting. So I compliment my colleague from Colorado and I also compliment my colleague from Alabama, who has no peer here in terms of his knowledge of the judicial system and of judicial temperament. We do not always agree, but Senator HEFLIN and I have been on the Judiciary Committee for 14-years plus together and we have agreed most of the time.

I might say we are going to miss you, Senator HEFLIN. But on this one I must respectfully disagree and decide with Senator BROWN.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I ask unanimous consent to add Senator Abraham as a cosponsor of the amendment.

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

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, first let me apologize to Senator BROWN, when I said that he had not filed a bill on this. It was my understanding—I was told that, that was done after a reasonable search. My staff or someone, must not have done it.

That sort of illustrates why there ought to be discretion in regards to facts, sometimes, that might be stated or alleged. You ought to have an opportunity to correct a mistake. There ought to be discretion when a party makes an honest mistake.

But basically this is an issue on whether or not we should return to a rule that was in effect for 10 years from 1983 up until December 1, 1993. The Judicial Conference, through an advisory committee, looked at the way rule 11 then was operating and it felt that there ought to be some changes made. So they proposed changes and the Judicial Conference of the United States agreed that there ought to be some changes made in rule 11, and that the rule ought not to be mandatory, but should be discretionary.

It went to the Supreme Court and six out of the nine members of the Supreme Court, agreed with the Judicial Conference and the Supreme Court recommended the changes to the Congress. And the 6-month deadline went by and therefore the new rules of civil procedure, including rule 11 went into effect because there was no vote trying to amend them or trying to prevent them from going into effect.

So we have a situation in which I feel we ought to see how rule 11 is going to work. The judiciary studied it for 10 years, the 10 years that the old rule operated and basically this amendment attempts to take us back to the old rule. Basically, the Brown amendment has a lot of different language but it really comes down to whether or not rule 11 ought to be mandatory in every instance or whether it ought to be discretionary with the judge.

Senator GRASSLEY talked about the milkshake case. There are bad cases. They say bad cases make bad law. You will have, probably, 1 out of 1,000 bad cases, but that ought not to necessarily be the controlling factor relative to a determination of whether or not the

rule ought to be mandatory or whether it ought to be discretionary.

I think the procedure that was followed by the judiciary was a very deliberate procedure. It involved a studied approach, and scholars spent hours and days considering this issue. And here we are going to consider this bill on the floor of the Senate, highly technical in nature, in about 1 hour and 10 minutes and are going to vote on it. It seems to me that the proper course that we ought to follow is to follow what the advisory committee of the Judicial Conference did, and what the Supreme Court recommended to the Congress.

So, in my judgment I feel it is a mistake to adopt the Brown amendment.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I wanted to note that I previously indicated that I wanted to have a tabling motion to establish the fact that I want this bill to be kept a product liability bill alone and not to have outside material added to it. But the prevailing sentiment of the chairman clearly is for an up-or-down vote, and I have yielded to that.

The PRESIDING OFFICER. Is there further debate on the amendment. If not, the question is on agreeing to the amendment of the Senator from Colorado. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Nebraska [Mr. EXON], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

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

The result was announced—yeas 56, nays 37, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—56

Abraham	Conrad	Gramm
Ashcroft	Coverdell	Grams
Baucus	Craig	Grassley
Bennett	D'Amato	Gregg
Brown	DeWine	Helms
Bryan	Dole	Hutchison
Burns	Domenici	Inhofe
Chafee	Dorgan	Johnston
Coats	Faircloth	Kassebaum
Cohen	Frist	Kempthorne
Kerry	Nickles	Smith
Kohl	Nunn	Snowe
Kyl	Packwood	Specter
Lott	Pressler	Stevens
Lugar	Reid	Thomas
Mack	Robb	Thompson
McCain	Roth	Thurmond
McConnell	Santorum	Warner
Murkowski	Simpson	

NAYS—37

Akaka	Glenn	Lieberman
Bingaman	Gorton	Mikulski
Boxer	Graham	Moseley-Braun
Bradley	Harkin	Moynihan
Breaux	Hatch	Murray
Byrd	Heflin	Pell
Campbell	Hollings	Rockefeller
Cochran	Inouye	Sarbanes
Daschle	Jeffords	Shelby
Dodd	Kerrey	Simon
Feingold	Lautenberg	Wellstone
Feinstein	Leahy	
Ford	Levin	

NOT VOTING—7

Biden	Exon	Pryor
Bond	Hatfield	
Bumpers	Kennedy	

So, the amendment (No. 599) was agreed to.

MORNING BUSINESS

Mr. SANTORUM. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

APOLOGY TO THE GOVERNOR OF THE STATE OF NEW YORK

Mr. MOYNIHAN. Mr. President, as the senior senator from the State of New York, and as a Democrat, I rise to offer an apology to our Governor, George E. Pataki, for the inexcusable conduct of the national chair of the Democratic National Committee yesterday in Albany.

As has now been reported, and not disputed, Mr. Donald L. Fowler referred to our Governor as a ''quasi-Governor''. This, he said, is self-defining. ''It means almost a governor, a governor who's not quite there, a governor who doesn't quite have it together * * *'' Later he volunteered to reporters, ''You know what 'quasi' means. It means half-assed.''

In the annals of political invective, there has been yet more vulgar calumny, but in this already sufficiently raucus time, this will serve. But will not be allowed to stand.

Mr. Pataki is our duly elected Governor; a person of manifest ability and quiet dignity. It defies reason that the national chair of the Democratic Party should journey to the State capital for the purpose of summoning New Yorkers to support President Clinton in the next election, whilst simultaneously insulting the person New Yorkers chose to be Governor in the last election.

I am sure Mr. Fowler regrets his remarks. I await his apology. And, to say again, tender my own on behalf of the great majority of Democrats who would not wish to be associated with what has now taken place, and who will insist that it not occur again. The President's task in New York will be difficult enough; that would make it impossible.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let's have that little pop quiz again:

Question: How many million dollars are in $1 trillion? While you are arriving at an answer, remember that it was the U.S. Congress that ran up the Federal debt that now exceeds $4.8 trillion.

To be exact, as of the close of business Tuesday, April 25, the total Federal debt—down to the penny—stood at $4,842,767,648,608.66—meaning that every man, woman, and child in America now owes $18,383.23 computed on a per capita basis.

Mr. President, again to answer the pop quiz question, How many million in a trillion? There are a million million in a trillion; and you can thank the U.S. Congress for the existing Federal debt exceeding $4.8 trillion.

IN MEMORY OF MARY BINGHAM

Mr. FORD. Mr. President, I would like to take a few moments to express my sadness over the passing of Mary Bingham, philanthropist and former owner of the Louisville Courier-Journal.

It has been said that ''we are defined by those we have lost,'' and this could not be more true than with Mary Bingham and the city she called home for over 60 years.

Her husband, Barry Bingham Sr., brought her to Louisville, and though they forged a partnership that gave the city a spark it had not known before, her personal contributions both to the newspaper and to the community at large, stood alone.

The Louisville Courier-Journal wrote that ''for those who understood the remarkable partnership that shaped this region's intellectual, political and cultural climate for a century, Mary Bingham's own stature and contributions were never in doubt.''

And while Mary Bingham was not a native Kentuckian, she quickly embraced the place she would live out her life and we were proud to call her our own.

Throughout the years, she was always the picture of grace and loveliness, a charming hostess and much-in-demand guest. But Mary Bingham was not afraid to reveal the fierce fighter within, when it came to battles on issues most important to her from the environment to high education standards.

And if those passionate beliefs placed her at odds with the powers that be, than so be it—whether they were foes

of civil rights or President Roosevelt himself.

But mostly, a woman who had experienced so much personal loss in her own life, wanted simply to care for others. So much so, that I am sure that upon hearing the news of her death, an entire city grieved not only for the loss of a great philanthropist, but also for a close friend.

In the days following her death, you often heard those describe her as being of a different era. Let us hope not. Her grace, her intellect, her sharp wit, and perhaps most important, her deep sense of compassion, are qualities desperately needed in these confusing times.

I know her life of accomplishment, commitment, and kindness will set a standard for generations of leaders to come in a city she led so well.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–715. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report on base closures; to the Committee on Armed Services.

EC–716. A communication from the Chairman of the National Research Council, transmitting, pursuant to law, the report on the F-22; to the Committee on Armed Services.

EC–717. A communication from the Secretary of the Air Force, transmitting, pursuant to law, a report on unit cost; to the Committee on Armed Services.

EC–718. A communication from the Acting Secretary of the Army, transmitting, pursuant to law, a report on program acquisition unit cost; to the Committee on Armed Services.

EC–719. A communication from the Director of the Defense Finance and Accounting Service, transmitting, pursuant to law, the report on multifunction cost comparison studies; to the Committee on Armed Services.

EC–720. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation entitled ''The National Defense Technology and Industrial Base, Defense Reinvestment, and Defense Conversion Act''; to the Committee on Armed Services.

EC–721. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on the Future Years Defense Program; to the Committee on Armed Services.

EC–722. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on the Cooperative Threat Reduction Program plan for fiscal years 1996 through 2001; to the Committee on Armed Services.

EC–723. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on the National Security Education Program; to the Committee on Armed Services.

EC–724. A communication from the Under Secretary of Defense (Acquisition and Technology), transmitting, pursuant to law, the report on the selected acquisition for the period October 1, 1994 through December 31, 1994; to the Committee on Armed Services.

EC–725. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, the report on the manpower request; to the Committee on Armed Services.

EC–726. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report relative to biological weapons; to the Committee on Armed Services.

EC–727. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report on base closures; to the Committee on Armed Services.

EC–728. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on baseline environment management; to the Committee on Armed Services.

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. MCCAIN (for himself and Mr. LIEBERMAN):

S. 726. A bill to amend the Iran-Iraq Arms Non-Proliferation Act of 1992 to revise the sanctions applicable to violations of that act, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. DASCHLE, Mr. COCHRAN, and Mr. LOTT):

S. Res. 111. A resolution relative to the death of the Honorable John C. Stennis, late a Senator from the State of Mississippi; considered and agreed to.

By Ms. SNOWE (for herself, Mr. SIMON, Mr. PRESSLER, Mr. SARBANES, Mr. D'AMATO, and Mr. DODD):

S. Con. Res. 11. A concurrent resolution supporting a resolution to the long-standing dispute regarding Cyprus; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN (for himself and Mr. LIEBERMAN):

S. 726. A bill to amend the Iran-Iraq Arms Non-Proliferation Act of 1992 to revise the sanctions applicable to violations of that Act, and for other purposes; to the Committee on Foreign Relations.

THE IRAN-IRAQ ARMS NONPROLIFERATION AMENDMENTS ACT

● Mr. MCCAIN. Mr. President, 4 years after the defeat of Iraq in the Persian Gulf war, Iran has emerged as a growing threat to the region. Bellicose statements are issued regularly from Tehran regarding the foreign presence in the Persian Gulf. More importantly, this rhetoric has been accompanied by disturbing reports of new arms shipments to Iran and the deployment of weapons which pose a direct threat to shipping in the Persian Gulf.

Today, Senator LIEBERMAN and I are introducing legislation to assist the President in his efforts to deal with this situation. The 1992 Iran-Iraq Arms Non-Proliferation Act, which I cosponsored with then-Senator GORE, established sanctions against third parties which assist Iran and Iraq in their efforts to rebuild their weapons capabilities. It was a start, but it did not go far enough. Efforts by Senator LIEBERMAN and I last year to expand the legislation were unsuccessful.

The 1992 bill was intended to target not only the acquisition of conventional weapons, but weapons of mass destruction as well. In the process of amending the bill to the 1993 Defense Act, however, the explicit references to weapons of mass destruction were dropped.

The bill we are introducing today attempts to make these applications absolutely clear. It also removes from the proposed sanctions exceptions for assistance under the Freedom Support Act, thereby removing the benefit of the doubt Congress may have given Russia in 1992. As I will explain later in my statement, Russia has perhaps used this exception to the detriment of United States policy in the Persian Gulf.

To the current list of sanctions against persons assisting Iran and Iraq in its weapons programs, which already include procurement and export sanctions, the amendments we are offering today add the denial of visas, denial of commercial credit, and denial of authority to ship products across United States territory. To the list of sanctions against countries offering similar assistance, the amendments add the denial of licenses for export of nuclear material, denial of foreign military sales, denial of the transfer of controlled technology, denial of the transfer of computer technology, suspension of the authority of foreign air carriers to fly to or from the United States, and a prohibition on vessels that enter the ports of sanctioned countries.

The comprehensive international U.N.-mandated sanctions against Iraq make the invocation of sanctions against third party suppliers of Iraq unnecessary in the near future, unless of course, the embargo is violated or revoked. Presently, the more pressing need with regard to Iraq is for the international community to remain firm on the embargo.

But given the history of the Iraqi military buildup before the gulf war, the sanctions included in the Iran-Iraq Act may, at a later date, be as important with regard to Iraq as they are currently in the case of Iran. Once the embargo is lifted, there will be a great temptation for cash-strapped economies to resume sales of military hardware to Iraq. Outside forces may once again be compelled to maintain a balance in the region through arms sales and a dangerous escalation of firepower.

Before Iraq's efforts to develop weapons of mass destruction were ended in the aftermath of the gulf war, it had made substantial progress. Iraq had several workable nuclear weapon designs, many key components, a multibillion dollar nuclear manufacturing base and a global supply network able to exploit lax Western export controls. Its Western-trained scientists had produced small amounts of weapons grade plutonium and enriched uranium. Even today, despite our best efforts, Iraq maintains the equipment and expertise that may permit it to resume its pursuit of a nuclear weapon once the embargo is lifted.

Saddam Hussein's efforts to develop chemical and biological weapons capabilities are also well known and, as with its nuclear program, there is some lingering concern about whether Iraq retains a capacity to produce these weapons.

The Congressional Research Service did two illuminating studies 2 years ago on the sources of Iraq's weapons of mass destruction programs. The list of Iraq's nuclear suppliers included 3 French firms, 11 German firms, 2 Italian firms, 2 Swedish firms, 4 Swiss firms, 4 British firms, and 2 Russian firms. The list of Iraq's chemical weapons suppliers included 7 Austrian firms, 2 Belgian firms, 2 French firms, 34 German firms, 3 Dutch firms, 3 Italian firms, 1 Spanish firm, 3 Swiss firms, and 1 British firm.

This is all in the past now. But we should take note that so many corporations displayed an interest in supplying Iraq without regard to the consequences. These corporations must be confronted with disincentives in order to keep them from once again serving as Saddam's supplier base.

It is also vitally important to prevent the reemergence of an Iraqi conventional military threat. One need only to observe the origins of the weapons which constituted the Iraqi threat in 1990 to know that the key to any postembargo containment strategy will depend on our ability to influence Iraq's trading partners in Europe, Russia, the People's Republic of China, and North Korea.

It is my hope and intention that the sanctions detailed in this legislation help us exercise the influence necessary to prevent another dangerous arms buildup in Iraq.

The threat from Iran is more immediate. Recent reports indicate a substantial increase in the Iranian military presence in the Persian Gulf. In addition to Silkworm missiles and two Russian-built submarines, Iran has deployed on the islands, it controls in the Straits of Hormuz thousands of additional troops, surface-to-air missiles, and artillery. These reports are particularly disturbing in that they are a part of a well-established pattern. Iran is importing hundreds of North Korean-made Scud–C missiles. It is expected to acquire the Nodong North Korean missiles currently under development; and it is reportedly assembling its own shorter-range missiles.

In the course of preparing this legislation, I asked the Congressional Research Service to compile a chronology of reported arms shipments to Iran since the passage of the original Iran-Iraq bill in 1992. The record is quite disturbing. I ask unanimous consent that the chronology be inserted into the RECORD following my remarks.

Iranian efforts to develop nuclear weapons are public and well established. Successive CIA Directors, and Secretaries Perry and Christopher have all testified to the effect that Iran is engaged in an extensive effort to acquire nuclear weapons. In February, Russia signed an agreement to provide Iran with a 1,000-megawatt light water nuclear reactor. The Russians indicate that they may soon agree to build as many as three more reactors—another 1,000-megawatt reactor, and two 440-megawatt reactors.

I have raised my concerns regarding this sale with the administration on a number of occasions. I have maintained that under the Freedom Support Act of 1992, which the Iran-Iraq Act of 1992 was intended to reinforce, the President must either terminate assistance to Russia or formally waive the requirement to invoke sanctions out of concern for the national interest.

The State Department informed me in a letter dated April 21, 1995, that ''to the best of its knowledge, Russia has not actually transferred relevant material, equipment, or technology to Iran,'' and so there is no need to consider sanctions. I was further informed that ''they are examining the scope of the proposed Russian nuclear cooperation with Iran, and as appropriate, they will thoroughly evaluate the applicability of sanctions,'' presumably, if at a later date they can confirm the transfer.

I have no reason to question the State Department's evaluation of the facts on the ground. However, I would note that there have been public reports of as many as 150 Russians employed at the site of the proposed reactor. There seems to be a dangerously fine line in determining when material, equipment, or technology useful in the manufacture of nuclear weapons has actually been transferred, especially when, as is the case with Iran, the reactor may already be partially complete.

At what point in the construction of the reactors does the transfer become significant? Do we allow the Russians to build portions of the reactor which do not strictly involve the transfer of dangerous equipment or technology while Iran obtains the most vital assistance from other sources? Although I cannot make this determination myself, common sense and an appropriate sense of caution would dictate that any assistance provided Iran in its efforts to acquire nuclear technology is significant. If the appropriate point to make this decision is not when technicians have been dispatched to the site and construction may have begun, I hope the administration can identify an equally obvious point at which the transfer has become the grounds for sanctions.

More importantly perhaps, I would point out that although the administration may have technical grounds for arguing that it is not yet required to invoke sanctions, making a determination on the applicability of sanctions sooner, rather than later, would serve as necessary leverage in resolving the issue. My intention is not to gut United States assistance to Russia. It is to prevent Russia from providing Iran dangerous technology. Waiting to make a determination until the transfer is complete defeats the purpose of the sanctions.

Ultimately, I fear that the reason the administration has not made a determination is that it does not want to jeopardize our relationship with Russia.

Based on this assumption and anticipating that the State Department may at a later date find other ways to avoid compliance with the Freedom Support Act, the legislation we are introducing today makes the President's legal responsibility under the act more explicit.

We sent our Armed Forces to war in the Persian Gulf once in this decade. They endured hardship to themselves and their families. Some will live with the injuries they incurred in service to our Nation for the rest of their lives. And as is the case with every war, some never returned. With the cooperation of our friends in Europe, whose own sacrifices to the effort to free Kuwait should not be forgotten, we must see that the service of these brave men and women was not in vain.

Stability and security in the Persian Gulf is vital to the world economy and to our own national interests. Aggressors in the region should know that if we must, we will return to the Persian Gulf with the full force of Operation Desert Storm. At the same time, our friends and adversaries elsewhere in the world should understand that the United States will do everything in its power to preclude that necessity. It is my sincere hope that this legislation will serve as an indication of just how serious we are.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, March 30, 1995.

To: Office of Senator John McCain, Attention: Walter Lohman.

From: Kenneth Katzman, Analyst in Middle Eastern Affairs, and Elizabeth Dunstan, Foreign Affairs and National Defense Division.

Subject: Arms and Technology Transfers to Iran.

This memorandum responds to your request to provide an unclassified chronology of reported weapons and technology transfers or agreements to Iran. Please call 7–7612 if you have any questions.

CHRONOLOGY OF WEAPONS AND TECHNOLOGY TRANSFERS TO IRAN USING PRESS REPORTS: OCTOBER 1992-PRESENT

10/8/92—The International Institute for Strategic Studies reported that China would supply a nuclear reactor under construction at Qazvin in northwestern Iran.

10/24/92—An editorial in the Washington Times reported Iran bought Sukhoi–24 light bombers from Russia and three diesel submarines, for $750 million per submarine. Most other sources cite a figure of $450 million a piece. Also, F–7 jet fighters were purchased from China. China reportedly agreed on September 10, 1992 to sell Iran a large nuclear reactor.

11/21/92—According to Defense Weekly, Russia delivered to Iran the first Kilo class submarine with a surface to air missile capacity in the form of manportable SA–14 Gremlin or SA–16 Gimlet.

2/10/93—According to the Jerusalem Israel Television Network, Iran recently took delivery of some Scud-C surface to air missiles with a range of about 500 km, as well as a number of launching pods, in accordance with a deal signed with North Korea. These are in addition to about 250 Scud missiles supplied to Iran before the Gulf War.

2/17/93—According to the U.S. Director of Naval Intelligence Iran has been negotiating for the purpose of five mini-submarines from an unspecified source to augment its Kilo submarines.

4/8/93—According to the New York Times, Iran was close to concluding a deal with North Korea to buy a new intermediate-range missile that the Koreans are developing. (The missile, called Nodong I, is said to have a range of 600 miles, although an extended range version may be able to reach up to about 800 miles).

5/11/93—Iran has taken delivery of eight supersonic, sea-skimming cruise missiles from the Ukraine, according to the Washington Times. The Sunburst missiles, to be based in the Strait of Hormuz, have reportedly been bought as part of a $1.5 billion barter agreement between Tehran, Moscow, and Kiev. Also included in the reported deal are 50 MiG–29, and other combat aircraft, more than 200 T–72M1 battle tanks and S–300 air defense system missiles.

8/8/93—Iran took delivery of its second Russian made Kilo-class submarine.

1/17/94—Defense News reported that Iran was negotiating with China to purchase a rocket-propelled mine called the EM52 that is planted on the sea floor until it detects a target. The report added that Iran had purchased 1,000 modern mines from Russia, including those that detect approaching ships with magnetic, acoustic, and pressure sensors.

3/28/94—China's Xian Aircraft Corporation will fly its Jian Hong-7 bomber on March 28, 1994, to Iran for a series of flight demonstrations, according to a Chinese defense industry source.

5/7/94—Iran will take delivery of its third Kilo-class diesel-electric submarine within five months, according to Jane's Defense Weekly. Iran reportedly bought an estimated 1,800 mines of various types from Russia when it received its first ''Kilo'' in November 1992.

9/19/94—Iran has acquired four or five fast attack missile (FACM) boats from China, according to US Vice Admiral Douglas Katz. The Hegu class vessel is 68 tons and is capable of being armed with C–801 and C–802 surface-to-surface missiles (Delivery of the missiles has not been confirmed).

9/26/94—Director of Central Intelligence James R. Woosley said Iran had acquired MiG29's, Su 24's, and T–72 tanks, as well as two Kilo-class attack submarines, from Russia. He added that Iran had turned to suppliers in ''both East and West,'' using intermediaries to purchase military technology clandestinely.

9/27/94—A senior U.S. official reportedly said in the Washington Post that Russia has given Iran sophisticated aircraft missiles to go along with the jets it sold to Iran.

12/14/94—Iran is trying to buy weapons technology in Germany for use in building Scud missiles, according to Reuters. In October 1994, the International Institute for Strategic Studies said Tehran had obtained 20 Chinese CSS–8 surface-to-surface missiles, armed with conventional weapons.

1/5/95—The New York Times reported that Russia had entered into a deal with Iran to provide up to four nuclear power reactors at the Bushehr nuclear reactor complex, a deal valued at nearly $1 billion. Later reports said the first reactor would be a water-pressurized reactor with a capacity of 1,000 megawatts. Russia might construct an additional 1,000 megawatt reactor and 2,440 megawatt reactors under the deal. The deal, formally announced January 8, 1995, also provides for Russia to train Iranian nuclear scientists and possibly provide research reactors as well. Russia reportedly is also required to recycle nuclear fuel for Iran. The New York Times report added that China has sold Iran two similar reactors and has provided two research reactors, but that those projects have been delayed. China reportedly has also sold several calutrons-magnetic isotope separation devices that can be used to derive uranium for an atomic bomb. In addition, according to the Times, China was setting up an assembly plant in Iran to produce intermediate range ballistic missiles (M–9's and M–11's).

1/30/95—The Washington Times reported that Iran has secured the aid of Indian companies in the construction of a poison-gas complex, according to a classified German intelligence report. The Indian companies have told authorities in Europe and elsewhere that they are engaged in building a pesticide factory just outside Tehran.

2/1/95—Belgian officials impounded a Russian-built surface to air missile bound for Iraq, according to the Washington Times.

3/2/95—The Associated Press said Israel had claimed Iran signed a contract with Argentina to buy fuel rods for reactors and then negotiated over the purchase of heavy water, considered essential for a nuclear weapons program. The report did not make clear whether or not the United States had succeeded in blocking the deal.

3/15/95—The New York Times reported that Iran had developed a vast network in Europe, Russia, and the Central Asian Republics to smuggle to Iran weapons parts and nuclear technology.

3/17/95—Poland announced that it will honor any existing contracts to supply tanks to Iran. Poland did not reveal the details of any tank sale to Iran, however.

4/3/95—The New York Times reported that the United States had provided intelligence to Russia about Iran's nuclear program, as part of any effort to dissuade Russia from providing nuclear technology to Iran. The intelligence reportedly showed that Iran is importing equipment needed to import nuclear weapons, that it has sought to but enriched uranium from former Soviet republics, such as Kazakistan, and that it is using many of the same smuggling techniques and routes that Iraq and Pakistan used in their efforts to acquire nuclear technology.●

● Mr. LIEBERMAN. Mr. President, as a cosponsor of the original Iran-Iraq Non-Proliferation Act, I am pleased to join Senator MCCAIN as well in this amendment to the 1992 act. Regrettably, Iran and Iraq have become no more law abiding during the past 2 years than they were when this law was first enacted. On the contrary, Iraq has attempted by persuasion or force to get the international community to lift economic sanctions while preserving as much as possible its catastrophic weapons capability. Iran, meanwhile, has continued its support for international terrorism.

The United States must remain vigilant in its effort to inhibit the destructive capability of these two renegade states. We must do everything we can to prevent them from receiving assistance from any source to pursue international lawlessness.

I believe this amendment will strengthen the current legislation and send a strong signal both to the renegade states and to other states which trade with Iran and Iraq that the United States remains committed to tight economic sanctions. There will be consequences for those who trade in embargoed goods with Iran and Iraq, just as there will be consequences for us all if renegade states are able to pursue their destructive objectives without hindrance. I urge my colleagues to join us in supporting this amendment to strengthen Iran-Iraq sanctions.●

ADDITIONAL COSPONSORS

S. 198

At the request of Mr. CHAFEE, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 198, a bill to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes.

S. 252

At the request of Mr. LOTT, the names of the Senator from Ohio [Mr. DEWINE] and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 252, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 253

At the request of Mr. LOTT, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 253, a bill to repeal certain prohibitions against political recommendations relating to Federal employment, to reenact certain provisions

relating to recommendations by Members of Congress, and for other purposes.

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 306

At the request of Mr. DORGAN, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 306, a bill entitled the ''Television Violence Reduction Through Parental Empowerment Act of 1995.''

S. 351

At the request of Mr. HATCH, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 356

At the request of Mr. COATS, his name was added as a cosponsor of S. 356, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

S. 440

At the request of Mr. COATS, his name was added as a cosponsor of S. 440, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 506

At the request of Mr. CRAIG, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 506, a bill to amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes.

S. 565

At the request of Mr. PRESSLER, the names of the Senator from Oregon [Mr. HATFIELD] and the Senator from Tennessee [Mr. FRIST] 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.

At the request of Mr. GORTON, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 565, supra.

S. 584

At the request of Mr. ROBB, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 584, a bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

S. 602

At the request of Mr. BROWN, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 602, a bill to amend the NATO Participation Act of 1994 to expedite the transition to full membership in the North Atlantic Treaty Organization of European countries emerging from communist domination.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the names of the Senator from Ohio [Mr. DEWINE] and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of Senate Resolution 85, A resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

AMENDMENT NO. 596

At the request of Mr. GORTON the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of amendment No. 596 proposed to H.R. 956, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

SENATE CONCURRENT RESOLUTION 11—RELATIVE TO CYPRUS

Ms. SNOWE (for herself, Mr. SIMON, Mr. PRESSLER, Mr. SARBANES, Mr. D'AMATO, and Mr. DODD) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 11

Whereas the long-standing dispute regarding Cyprus remains unresolved;

Whereas the military occupation by Turkey of a large part of the territory of the Republic of Cyprus has continued for over 20 years;

Whereas the status quo on Cyprus remains unacceptable;

Whereas the United States attaches great importance to a just and peaceful resolution of the dispute regarding Cyprus;

Whereas the United Nations and the United States are using their good offices to resolve such dispute;

Whereas on January 5, 1995, President Clinton appointed a Special Presidential Emissary for Cyprus;

Whereas the United Nations has adopted numerous resolutions that set forth the basis of a solution for the dispute regarding Cyprus;

Whereas paragraph (2) of United Nations Security Council Resolution 939 of July 29, 1994, reaffirms that a solution must be based on a State of Cyprus with a single sovereignty and international personality, and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council Resolutions, in a bicommunal and bizonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession;

Whereas the United Nations Secretary General has described the occupied part of Cyprus as one of the most highly militarized areas in the world;

Whereas the continued overwhelming presence of more than 30,000 Turkish troops on Cyprus hampers the search for a freely negotiated solution to the dispute regarding Cyprus;

Whereas the United Nations and the United States have called for the withdrawal of all foreign troops from the territory of the Republic of Cyprus; and

Whereas comprehensive plans for the demilitarization of the Republic of Cyprus have been proposed: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) reaffirms that the status quo on Cyprus is unacceptable;

(2) welcomes the appointment of a Special Presidential Emissary for Cyprus;

(3) expresses its continued strong support for efforts by the United Nations Secretary General and the United States Government to help resolve the Cyprus problem in a just and viable manner at the earliest possible time;

(4) insists that all parties to the dispute regarding Cyprus agree to seek a solution based upon the relevant United Nations resolutions, including paragraph (2) of United Nations Security Council Resolution 939 of July 29, 1994;

(5) reaffirms the position that all foreign troops should be withdrawn from the territory of the Republic of Cyprus;

(6) considers that demilitarization of the Republic of Cyprus would meet the security concerns of all parties involved, would enhance prospects for a peaceful and lasting resolution of the dispute regarding Cyprus, would benefit all of the people of Cyprus, and merits international support; and

(7) encourages the United Nations Security Council and the United States Government to consider alternative approaches to promote a resolution of the long-standing dispute regarding Cyprus based upon relevant Security Council resolutions, including incentives to encourage progress in negotiations or effective measures against any recalcitrant party.

● Ms. SNOWE. Mr. President, today I am submitting a resolution calling for the end of the long-standing dispute on Cyprus. I am pleased to be joined as original cosponsors by my distinguished colleagues, Senators SIMON, PRESSLER, SARBANES, D'AMATO, and DODD.

Mr. President, last year marked the 20th anniversary of the Turkish invasion of Cyprus. Year after year the political deadlock over Cyprus has endured. But elsewhere in the world these same two decades has seen the end to the Soviet Union, mutual recognition between Israel and the PLO, a peaceful transition to majority rule in South Africa, and a renunciation of terrorism by the Irish Republican Army and movement toward an enduring peace in Northern Ireland. It is long past time for a similar breakthrough for peace on Cyprus.

That is the purpose of this resolution. This resolution speaks with moderation with the hope of bringing together all sides to the conflict. But despite its moderate tones, the resolution calls for looking at the problem of Cyprus in a radically new way. The resolution: declares the status quo on Cyprus to be unacceptable; welcomes President Clinton's appointment of a special emissary for Cyprus; calls on all parties to seek a solution based on the U.N. Security Council resolution of

July 29, 1994, which stated that any solution must be based on a single State of Cyprus with its independence and territorial integrity safeguarded; calls for the withdrawal of all foreign troops; states that proposals for a total demilitarization of Cyprus would enhance the security of all the Cypriot people and merits support; and urges the Security Council and the United States Government to consider alternative approaches to promote a resolution to the long-standing dispute, including incentives to encourage progress or sanctions against recalcitrant parties.

Mr. President, two decades ago, Turkey's brutal invasion drove more than 200,000 Cypriots from their homes and reduced them to the status of refugees in their own land. More than 2,000 people are still missing, including five American citizens. The Turkish Army seized 40 percent of the land of Cyprus, representing 70 percent of the island's economic wealth. Today, Turkey continues to maintain over 35,000 troops on the island, which forms the bedrock of the continuing political impasse.

The phrase ''35,000 Turkish troops'' may sound familiar, because this is the number of troops Turkey has used, with tragic sameness, in its invasion last month of U.N.-protected Kurdish areas of northern Iraq. For the benefit of the Kurdish people of Iraq, who have been subject to genocidal attacks by their own government, I only hope that they will not suffer the same fate as the people of Cyprus. On Cyprus, Turkey initially pledged to stay only for a brief time to protect the Turkish-Cypriot minority on Cyprus. Now, we are beginning the third decade of Turkish occupation.

In an effort to transform this paradigm of deadlock, last year Cypriot President Glafcos Clerides offered to totally demilitarize the island of Cyprus in the context of a Turkish military withdrawal and political agreement to reunify the country. The Government of Cyprus, then, has volunteered to entirely disband its military forces, giving up this fundamental sovereign attribute for the purpose of peace.

The need to transform the terms of the debate over Cyprus is self evident for all who choose to see. I was first elected to the House in 1978, 4 years after the Turkish invasion. That was the same year that President Carter succeeded in getting the United States arms embargo on Turkey lifted on the promise of an imminent breakthrough on ending the tragic and illegal division of the island.

Every year I have been in Congress I have noted a sad, cynical process unfold. Each year, there are hints of movement and glimmering hopes of ending the Turkish occupation and reuniting Cyprus. The most recent opportunity has been the U.N.-sponsored talks over ''Confidence Building Measures,'' which would certainly be constructive if the talks had been undertaken in good faith by all sides and if they could set the stage for moving rapidly toward a final resolution of the dispute. But neither has been the case, so the talks ultimately atrophied into endless discussions and disagreements over the same kind of modest half-measures that have been the subject of endless talk ever since 1974.

Mr. President, we must continue to press for a negotiated settlement to the illegal division of Cyprus, and we must neither accept nor become comfortable with the status quo. This resolution is moderate in tone, and refrains from laying blame on any party. I believe that all parties can and must take a new look at the problem of Cyprus and work in good faith to bring this tragedy to an end. But as this resolution makes clear, our Nation must also be prepared to work alone or through the Security Council to ensure that all parties also understand that a continued impasse on Cyprus will not be tolerated.●

AMENDMENTS SUBMITTED

THE COMMONSENSE LEGAL STANDARDS REFORM ACT OF 1995

ABRAHAM (AND OTHERS) AMENDMENTS NOS. 600–601

(Ordered to lie on the table.)

Mr. ABRAHAM (for himself, Mr. MCCONNELL, and Mr. KYL) submitted two amendments intended to be proposed by them to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

AMENDMENT NO. 600

Strike out section 109 and insert in lieu thereof the following new section:

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC DAMAGES

(A) FINDINGS.—The Congress finds that—

(1) because of the joint and several liability doctrine, municipalities, volunteer groups, nonprofit entities, property owners, and large and small businesses are often brought into litigation despite the fact that their conduct often had little or nothing to do with the harm suffered by the claimant;

(2) the imposition of joint and several liability for noneconomic damages frequently results in the assessment of unfair and disproportionate damages against defendants that bear no relationship to their fault or responsibility;

(3) producers of products and services who are only marginally responsible for an injury risk bearing the entire cost of a judgment for noneconomic damages even if the products or services originate in States that have replaced joint liability for noneconomic damages with proportionate liability, because claimants have an incentive to bring suit in States that have retained joint liability; and

(4) the unfair allocation of noneconomic damages under the joint and several liability doctrine disrupts, impairs and burdens commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and nonprofit entities.

(b) GENERAL RULE.—Notwithstanding any other section of this Act, in any civil action whose subject matter affects commerce brought in Federal or State court on any theory, the liability of each defendant for noneconomic damages shall be several only and shall not be great.

(c) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic damages allocated to their 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) PERENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic damages allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person, including the claimant, responsible for the claimant's harm, whether or not such person is a part to the action.

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

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

(2) give rise to any claim for joint liability;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the applicability of joint liability to any kind of damages;

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

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

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

(e) FEDERAL COURT JURISDICTION NOT ESTABLISHED.—Nothing in this section shall be construed to establish any jurisdiction in the district courts of the United States on the basis of section 1331 or 1337 of title 28, United States Code.

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

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

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

(3)(A) The term ''economic damages'' means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of obtaining replacement services in the home (including, without limitation, child care, transportation, food preparation, and household care), costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term ''economic damages'' shall not include noneconomic damages.

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

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

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

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

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

AMENDMENT NO. 601

Strike out section 109 and insert in lieu thereof the following new section:

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC DAMAGES.

(a) FINDINGS.—The Congress finds that—

(1) because of the joint and several liability doctrine, municipalities, volunteer groups, nonprofit entities, property owners, and large and small businesses are often brought into litigation despite the fact that their conduct often had little or nothing to do with the harm suffered by the claimant;

(2) the imposition of joint and several liability for noneconomic damages frequently results in the assessment of unfair and disproportionate damages against defendants that bear no relationship to their fault or responsibility;

(3) producers of products and services who are only marginally responsible for an injury risk bearing the entire cost of a judgment for noneconomic damages even if the products or services originate in States that have replaced joint liability for noneconomic damages with proportionate liability, because claimants have an incentive to bring suit in States that have retained joint liability; and

(4) the unfair allocation of noneconomic damages under the joint and several liability doctrine disrupts, impairs and burdens commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and non-profit entities.

(b) GENERAL RULE.—Notwithstanding any other section of this Act, in any product liability or libel action whose subject matter affects commerce brought in Federal or State court on any theory, the liability of each defendant for noneconomic damages shall be several only and shall not be joint.

(c) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic damages 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 damages allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person, including the claimant, responsible for the claimant's harm, whether or not such person is a party to the action.

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

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

(2) give rise to any claim for joint liability;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the applicability of joint liability to any kind of damages;

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

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

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

(e) FEDERAL COURT JURISDICTION NOT ESTABLISHED.—Nothing in this section shall be construed to establish any jurisdiction in the district courts of the United States on the basis of section 1331 or 1337 of title 28, United States Code.

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

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

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

(3)(A) The term ''economic damages'' means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of obtaining replacement services in the home (including, without limitation, child care, transportation, food preparation, and household care), costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term ''economic damages'' shall not include noneconomic damages.

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

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

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

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

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

ABRAHAM (AND OTHERS) AMENDMENT NO. 602

(Ordered to lie on the table.)

Mr. ABRAHAM (for himself, Mr. MCCONNELL, and Mr. KYL) submitted an amendment intended to be proposed by them to an amendment to the bill H.R. 956, supra; as follows:

In lieu of the language proposed to be inserted, insert the following:

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC DAMAGES.

(a) FINDINGS.—The Congress finds that—

(1) because of the joint and several liability doctrine, municipalities, volunteer groups, nonprofit entities, property owners, and large and small businesses are often brought into litigation despite the fact that their conduct often had little or nothing to do with the harm suffered by the claimant;

(2) the imposition of joint and several liability for noneconomic damages frequently results in the assessment of unfair and disproportionate damages against defendants that bear no relationship to their fault or responsibility;

(3) producers of products and services who are only marginally responsible for an injury risk bearing the entire cost of a judgment for noneconomic damages even if the products or services originate in States that have replaced joint liability for noneconomic damages with proportionate liability, because claimants have an incentive to bring suit in States that have retained joint liability; and

(4) the unfair allocation of noneconomic damages under the joint and several liability doctrine disrupts, impairs and burdens commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and non-profit entities.

(b) GENERAL RULE.—Notwithstanding any other section of this Act, in any civil action whose subject matter affects commerce brought in Federal or State court on any theory, the liability of each defendant for noneconomic damages shall be several only and shall not be joint.

(c) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic damages 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 damages allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person, including the claimant, responsible for the claimant's harm, whether or not such person is a party to the action.

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

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

(2) give rise to any claim for joint liability;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the applicability of joint liability to any kind of damages;

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

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

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

(e) FEDERAL COURT JURISDICTION NOT ESTABLISHED.—Nothing in this section shall be construed to establish any jurisdiction in the district courts of the United States on the basis of section 1331 or 1337 of title 28, United States Code.

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

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

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

(3)(A) The term ''economic damages'' means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of obtaining replacement services in the home (including, without limitation, child care, transportation, food preparation, and household care), costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term ''economic damages'' shall not include noneconomic damages.

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

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

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

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

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

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Wednesday, April 26, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on child welfare programs.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, April 26, 1995, at 10 a.m. to hold an open confirmation hearing on the nomination of John Deutch to be Director of Central Intelligence.

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

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, April 26, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:45 a.m. The purpose of this oversight hearing is to review the coordination of and conflicts between the Federal forest management and general environmental statutes.

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

ADDITIONAL STATEMENTS

A CHANCE FOR JUSTICE IN EAST TIMOR

● Mr. LEAHY. Mr. President, on January 12 of this year, the Indonesian military tortured and murdered six unarmed civilians in Liquisa, near Dili, in East Timor.

The Indonesian Army Chief of Staff, while reportedly admitting ''procedural violations,'' claimed the victims were supporters of the guerrillas. However, the National Human Rights Commission of Indonesia, which released a scathing report on March 2, accused the military of ''unlawful'' killings of innocent civilians.

As anyone who follows events in East Timor knows, the Liquisa shootings were not an isolated incident. They were part of a pattern of political violence on the island in which Indonesian troops have been implicated for decades.

However, the fact that the National Human Rights Commission published such a conscientious report is encouraging. The Indonesian Government now has two choices.

One choice is to repeat its mistakes after the November 1991 Dili massacre. Many here will recall how back then, the unarmed demonstrators were sentenced to long prison terms, while a handful of lower ranking soldiers who fired the deadly shots went to jail for a few months and the officers who gave the orders and tried to cover up the crime went scot free.

The other choice is to take responsibility, and use this opportunity to punish severely all those implicated in these crimes, and by doing so deter others from committing such atrocities in the future. Only when the impunity ends will the abuse of human rights end.

Let us hope that the Indonesian Government seizes this opportunity to demonstrate that no one is above the law, because it is long overdue in a country that seeks to be accepted as a respectable world power.●

TRIBUTE TO RAYMOND J. LANDRY

● Mr. SMITH. Mr. President, I rise to pay tribute to one of New Hampshire's finest law enforcement officials, Raymond J. Landry, chief of police of the city of Nashua, on the occasion of his retirement on May 1, 1995.

As a veteran of the U.S. Navy, I am particularly proud of the distinguished professional accomplishments of Chief Landry, who is a Navy man himself.

A Nashua native, Chief Landry has held progressively more responsible positions within the Nashua Police Department since he first joined it in 1964. After serving as a front line police officer for 7 years, Chief Landry was promoted to sergeant in 1971.

Less than 2 years later, in 1973, Chief Landry became a lieutenant. Five years after that, in 1978, Chief Landry was promoted to captain. by 1984, he was named major. Finally, Mr. Landry attained his current high rank as chief of police of the city of Nashua in 1988.

By any measure, Chief Landry has had a most impressive career in the law enforcement field. Throughout his career, he has demonstrated the initiative, dedication, and foresight to gain the best available training to serve the citizens of Nashua. A graduate of the Federal Bureau of Investigation [FBI] National Academy, Chief Landry also is an alumnus of the Command Training Institute and the Advanced Management Practices Program of Babson College. Finally, Mr. President, Chief Landry is a graduate of the Police Executive Development Program of the Pennsylvania State University.

Beyond his first-class training and professional development efforts, Chief Landry has been active in numerous leadership organizations in the law enforcement field. He is a member of the International Association of Chiefs of Police, the New England State Police Information Network, the New Hampshire Association of Chiefs of Police, the New England Association of Chiefs of Police, and the Hillsborough County Chiefs Association. In addition, Chief Landry serves on the executive board of the drug task force of the office of the attorney general of New Hampshire.

Mr. President, I understand that there will be a surprise gathering of upwards of 700 people in Nashua on May 5 to honor Chief Raymond Landry as he retires. Law enforcement officials from throughout New Hampshire, as well as State and local dignitaries, will be in attendance.

Mr. President, our Nation's police officers richly deserve the respect in which they are held by our citizens. They serve quietly and effectively, protecting the public and keeping the

peace. All to often, they risk their lives in the line of duty. Having risen to the very top of his profession, Chief Landry can take a great measure of pride in his accomplishments and the admiration in which his colleagues and his constituents in Nashua and throughout New Hampshire hold him.

So, Mr. President, I salute Chief Raymond Landry. I will be with him and his friends in spirit as they celebrate his magnificent career on May 5. May God bless him and grant him a long, happy, and healthy retirement.●

SOCIAL SECURITY—FAMILY SECURITY

● Ms. MIKULSKI. Mr. President, I rise today to discuss the real contract with America. This contract was not written last summer, and it was not designed to last 100 days. It was written 60 years ago and was designed to last indefinitely. Mr. President, I am referring to Social Security, our primary contract with the American family.

There has been a lot of talk recently about Social Security, much of it negative. There are many misconceptions about what Social Security stands for, what it does, and how it works. Today, I want to set the record straight.

Social Security is a sacred compact between the U.S. Government and the American people. It is a system that gives help to people who practice self-help. Since it was created by President Roosevelt during the New Deal, it has provided financial security, and most importantly, family security for millions of Americans. There are so many problems in our Nation today that are robbing our families of their security. Crime, violence, drugs and divorce are some of the biggest fears that American families face. I do not want to add Social Security to that list of fears.

Social Security is family security. If any of my colleagues doubt that, consider this fact: Twenty-four million Americans rely on Social Security to provide more than half their income. Almost 5½ million Americans rely on Social Security as their only source of income. To all those millions of Americans, Social Security means the ability to put food on the table, to support their families, and to live independently.

Let me address some other misconceptions about Social Security. It is not the cause of our budget deficit. It has never added one penny to our deficit or our national debt. It is an independent, self-financed, and dedicated fund. Social Security is not welfare either. Today's retirees paid into the system and have earned a secure retirement, not a handout.

I will not rob American families of their secure retirement. I will not vote to cut benefits and I will not support legislation that threatens the Social Security trust fund. Throughout my career, I have voted to defend Social Security. I have defended cost of living adjustments, which protect against the erosion of benefits by inflation. I have opposed a reduction in the Social Security tax, which would jeopardize the trust fund. I supported making Social Security an independent agency, which will ensure that it is run efficiently and smoothly. Finally, I voted to exempt Social Security from the balanced budget amendment to the Constitution.

If we do not exempt Social Security from a balanced budget amendment, the trust fund will be in jeopardy. Right now there is a surplus in the trust fund. In other words, there is more money being paid into the system by working people than there is being paid out to retirees. By law, this surplus can only be used to pay benefits, the administrative costs of Social Security, and to buy Government securities. These Government securities become part of the trust fund and earn interest, just like Government bonds that we might purchase as an investment. I strongly believe that without it being exempted, this surplus will be raided by politicians in the name of deficit reduction. This would result in emptying the trust fund of the current Government securities, which must be paid back to Social Security. Make no mistake, this means cuts. It means going back on promises we made. It means saying no to people who have spent a lifetime playing by the rules and contributing to the success of this country. It means that the Government cannot hold up its end of the primary contract with American families. And it means robbing families of their security.

My colleagues on the other side of the aisle said, ''Don't worry. We won't touch Social Security. We want to protect it just like you do.'' Yet they were not willing to write a protection into the constitutional amendment. I know I will not vote to raid the trust fund, and it may be true that my friends on the other side of the aisle won't either. But I cannot speak for members of a future Congress, and I don't believe they can either. This is the danger that we faced during the balanced budget amendment debate. I am happy to say that it is a danger that we have temporarily avoided.

I am a middle-class Senator. I have spent my career helping those who are not in the middle class get there, and making sure that those who are in the middle class have the security to stay there. Social Security is the linchpin that holds the majority of our retired citizens in the middle class. Promises made must be promises kept. I will continue to fight for the promise of family security that America's retirees have earned.●

TRIBUTE TO CENTRAL FALLS (RI) JR./SR. HIGH SCHOOL

● Mr. CHAFEE. Mr. President, I would like to recognize the achievements of 25 students from Central Falls Jr./Sr. High School of Central Falls, RI.

These students, Kelly Bianchi, Janeth Blandon, Melissa Casto, Berta Couto, Yolanda DaSilva, Daisy Diaz, Elizabeth Diaz, Michelle Doucet, Susan Freitas, Elizabeth Garstka, Martha Gutierrez, Melanie Kowal, Linda Layous, Rebecca Lussier, Michael Macedo, Juan Manzano, Nelci Paiva, Beatriz Patino, Christine Patricio, Celena Sackal, Kathleen Siwy, Hannah Tarawali, Helena Taveira, Agnes Wec, and Alexandra Zaldana have distinguished Central Falls and the State of Rhode Island through their selection as Rhode Island's delegation to the ''We the People . . . The Citizens and the Constitution'' national finals competition.

I would also like to recognize their teacher, Mr. Bertrand Brousseau, who deserves much of the credit for the success of the team. The district coordinators, John Waycott and Charles Golden, and State coordinator Henry Cote also contributed a great deal of time and effort to help the team reach the national finals.

This program, supported and funded by Congress, has been developed to educate young people about the Constitution and the Bill of Rights. The 3-day national competition simulates a congressional hearing in which students' oral presentations are judged on the basis of their knowledge of constitutional principles and their ability to apply them to historical and contemporary issues.

Administered by the Center for Civic Education, ''We the People . . . The Citizens and the Constitution,'' has provided curricular materials at upper elementary, middle, and high school levels for more than 60,000 teachers, 22,000 schools, and 20 million nationwide.

This tremendous program provides an excellent opportunity for students to gain a perspective about the history and principles of our Nation's constitutional Government. I wish these budding constitutional experts the best of luck and look forward to their future participation in our Nation's political arena.●

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I would like to proceed as if in morning business, but I would like a period longer than 5 minutes.

Mr. FORD. Mr. President, would the Senator allow us to do this and then we will give her what time she might desire, then we will close out. I do not think we will be over 5 or 6 minutes.

Ms. MOSELEY-BRAUN. Thank you.

Mr. FORD. I thank the Senator.

THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 52, S. 349, the Navajo-Hopi Relocation Housing bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 349) to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be deemed read for a 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.

So the bill (S. 349) was deemed read for a third time, and passed, as follows:

S. 349

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

SECTION 1. REAUTHORIZATION OF APPROPRIATIONS FOR THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

Section 25(a)(8) of Public Law 93–531 (25 U.S.C. 640d–24(a)(8)) is amended by striking ''1989,'' and all that follows through ''and 1995.'' and inserting ''1995, 1996, and 1997.''.

TRIPLOID GRASS CARP INSPECTION FEE COLLECTION ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 73, S. 268.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 268) to authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be deemed read for a 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.

So the bill (S. 268) was deemed read for a third time, and passed, as follows:

S. 268

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

SECTION 1. COLLECTION OF FEES FOR TRIPLOID GRASS CARP CERTIFICATION INSPECTIONS.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the Fish and Wildlife Service (referred to in this section as the ''Director''), may charge reasonable fees for expenses to the Federal Government for triploid grass carp certification inspections requested by a person who owns or operates an aquaculture facility.

(b) AVAILABILITY.—All fees collected under subsection (a) shall be available to the Director until expended, without further appropriations.

(c) USE.—The Director shall use all fees collected under subsection (a) to carry out the activies referred to in subsection (a).

INDIAN CHILD PROTECTION REAUTHORIZATION ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 75, S. 441.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 441) to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be deemed read for a 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.

So the bill (S. 441) was deemed read for a third time, and passed, as follows:

S. 441

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

SECTION 1. REAUTHORIZATION OF PROGRAMS.

Sections 409(e), 410(h), and 411(i) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208(e), 3209(h), 3210(i), respectively) are each amended by striking ''and 1995'' and inserting 1995, 1996, and 1997''.

RELATIVE TO THE DEATH OF THE HONORABLE JOHN C. STENNIS

Mr. SANTORUM. Mr. President I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 111, submitted earlier today by Senators DOLE, DASCHLE, COCHRAN, and LOTT.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 111) relative to the death of the Honorable John C. Stennis, late a Senator from the State of Mississippi.

The Senate proceeded to consider the resolution.

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

So the resolution (S. Res. 111) was agreed to, as follows:

S. RES. 111

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable John C. Stennis, late a Senator from the State of Mississippi.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Senator.

Mr. SANTORUM. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Illinois.

PRODUCT LIABILITY FAIRNESS ACT

Ms. MOSELEY-BRAUN. Mr. President, I would like to speak for a few moments about product liability reform. The bill the Senate is now considering, the Product Liability Fairness Act of 1995, would establish national standard to be applied by State and Federal courts in product liability lawsuits. Let me say at the outset that I do believe some national product liability standards are needed, for reasons I will outline below.

This consept—the concept of Federal product liability standards—is not entirely new to Congress; one version or another of the legislation has been pending before this body for the past 15 years. In past years the majority of the product liability debate has focused on whether the Federal Government should get involved in this area, rather than on what the Federal standards should be. This focus has, in my opinion, been unfortunate.

I believe the Senate must begin to focus on the issue of what standards should apply to product liability cases. Indeed, I stood on the Senate floor after the product liability bill failed last year, stating my intention not to filibuster this bill again, and stating my desire to debate what alterations the Federal Government should make in the area of product liability law.

That is not to imply that determining Federal product liability standards will be easy. It is often said when considering difficult legislation that ''The devil is in the details.'' This is one vote where the details really do matter. Any bill passed by the Senate must be fair not only to the manufacturers who place products on the market; it must also be fair to the workers who help build those products, and to the consumers who purchase them.

The nature of the American marketplace has changed; commerce is no longer local, but is national and international in scope. American manufacturers ship their goods throughout the 50 States and beyond; this is true not only of our biggest companies, like Motorola, but of small businesses like Rockwell Graphic Systems in Westmont, IL, or Oxy Dry Corp. in Itasca, IL.

Given the increasingly global nature of the marketplace, I believe it makes sense to have some basic, national

product liability standards that apply across the board. In the absence of uniform standards, companies find themselves being sued in one State for conduct that would not be actionable in another. In States without a statute of repose, for example, companies are forced to defend lawsuits for products that are 50 or 60 years old, while other States limit the right to sue on those products after 15 or 20 years. In States with vicarious liability statutes, companies that rent or lease products may find themselves sued for actions over which they had no control—while in States without vicarious liability, such suits cannot go forward.

Holding manufacturers accountable to 50 different standards in 50 different States may have been justified when products were shipped down the street to be sold in the corner grocery store; it does not make sense when products are shipped for sale throughout the 50 States. The Constitution of the United States, in article 1, section 8, grants Congress the power to regulate interstate commerce. Enactment of product liability legislation is nothing more than a valid and necessary exercise of this constitutional power.

Nor does establishing different standards in different States benefit consumers. There is no reason why a consmer in Massachusetts or Arizona should have greater or lesser rights than a consumer in Illinois. All consumers should have the same ability to access the courts. The bill introduced by Senators ROCKEFELLER and GORTON is not perfect in this regard, as I will discuss. But it is a good beginning, and it does, at long last, allow the U.S. Senate to address the product liability issue. I would like at this time to congratulate Senator ROCKEFELLER, who recognized years ago that product liability was an issue the U.S. Senate had to address. He has worked tirelessly to craft legislation that strikes an appropriate balance between preserving access to the courts on the one hand, and providing a measure of certainty and predictability to manufacturers on the other. We owe him a debt of gratitude.

Mr. President, I know that Senators on both sides of this issue point to numerous studies which purport to prove their support or opposition to this legislation. Supporters of the bill cite studies which conclude that product liability reform will spur job creation. Opponents of the bill, conversely, cite studies which conclude that product liability reform will have no effect on job creation. Supporters of the bill cite studies to show that product liability reform will result in lower prices to consumers, while opponents cite studies that show the bill will have no effect on consumer prices. I have considered all these studies, and I do not believe that the benefits of product liability reform can be proven with studies or statistics.

That is not to say, however, that this bill will not make a difference. Based on countless conversations members of my staff and I have had with Illinois manufacturers, with Illinois small business men and women, and with major Illinois corporations, I am convinced that the bill being debated by the Senate will help give employers a level of certainty, a level of predictability, and will create jobs. As one example, consider the statute of repose. I have talked to manufacturers who have been sued in the 1980's for products their company manufactured in the 1920's. The fact that a manufacturer can be sued in 1995 for a piece of machinery that was manufactured 50, 75, even 100 years ago, creates a substantial disincentive for manufacturers to create quality products that will stand the test of time. If American manufacturers do not create quality products, American workers don't work. The U.S. Senate should not be perpetuating a system that acts as a disincentive to the manufacturing of quality products; the statue of repose in S. 565 will help ensure that we do not.

In addition, I think it is important to keep in mind that no individual has just one role in this debate, Consumers are not just consumers, they are also workers whose ability to find a job may hinge on how many products are manufactured in this country. They are also small business men and women, whose ability to keep their firms afloat and meet their payroll may hinge on the amount of money they have to spend on product liability insurance. They are retirees, whose pensions are dependent on the solvency of their former employers.

That being said, it is also true that establishing Federal standards for tort liability represents a fundamental change in the structure of the product liability system, one that Congress must consider very carefully. I am pleased that our focus today is not limited to whether the Federal Government should be involved in product liability reform; instead, we are finally addressing what standards are necessary and appropriate to apply in product liability actions. Those standards must, however, be evaluated carefully. The Federal Government must strike an appropriate balance between the right of consumers to access the courts for legitimate lawsuits, and the need for employers and manufacturers to have some predictability about the standards by which their products will be judged. The Federal Government must strike a balance that prevents manufacturers from placing dangerous products on the market, but that also encourages manufacturers to develop new products that could save lives. This is not an all-or-nothing debate. We can craft a bill that is fair to everyone.

Mr. President, much of the debate that has swirled around S. 565 has focused on provisions that are not included in the Senate bill, but were instead passed by the House of Representatives. As you know, the House recently passed a series of bills designed to reform the civil justice system. A number of Senators have taken to the floor to criticize provisions in the House legislation that are grossly unfair to consumers, and would limit the right of ordinary Americans to access the courts. I too would like to address those provisions at this time, in the hopes that the U.S. Senate will reject them; if it does not, I will be forced to vote against a product liability bill that I want to support.

First and foremost, I cannot support legislation that imposes any form of a loser pays, or English rule system in the U.S. courts. I firmly believe that loser pays provisions run counter to the most fundamental notion of American jurisprudence, namely, that our courts serve all our citizens, not merely the rich and powerful. Loser pays provisions seriously undermine our efforts to open the courts to all Americans, regardless of income level. Instead, loser pays guarantees a system of justice where the most important factor is wealth. I cannot think of anything more un-American than charging an entry fee at the courthouse door. For that is what loser pays provisions do—if they are enacted, access to the courts will be determined not by who is right and who is wrong, but will be determined by how much an individual makes. Americans can and should be proud of the fact that, under the American legal system, all individuals have access to the courts. In America, the poorest worker who has been wronged by the richest corporation can go to court, can prove the corporation was wrong, and can get justice. But if the English rule is adopted, that situation will change. Even those individuals with meritorious claims cannot afford the risk of paying not only their own legal fees, but those of the defendant as well. As a result, only those with enough financial security to risk paying for their own legal fees and those of the defendant—a very small segment of the population indeed—would have the ''luxury'' of pursuing their claim in court.

I know some have claimed that the loser pays system passed by the House of Representatives is actually very moderate. Under the House-passed bill, plaintiffs in Federal court who reject a settlement offer, and then receive a lower award at trial, would be required to bear the opposing sides legal fees from the time of the settlement offer. Supporters of this provision—what they refer to as a ''modified'' English rule—maintain such fee shifting is necessary to deter frivolous lawsuits. In reality, such an amendment would have a much more detrimental effect. The amendment would also deter meritorious lawsuits by requiring a party prevailing on the merits to pay the losing side's attorney fees. Think about that for a minute. Under the bill passed by the House, a party who wins in court, who proves that the defendant

manufactured a dangerous product, engaged in employment discrimination, or was guilty of medical malpractice, could still be forced to pay the other side's legal fees. I believe it is bad public policy to allow wrongdoers to escape paying their own legal bills when they are proved on the merits in a court of law to be at fault.

I do not disagree that Congress should encourage parties to settle their claims. Certainly all Americans, including victims of unsafe products or medical malpractice, prefer a quick and certain resolution of their claims. That is why plaintiffs will, in all likelihood, accept settlements offers if they are just and reasonable. There is no need to impose draconian measures that greatly infringe on the ability of all individuals to access the courts. I cannot think of anything in the history of American jurisprudence that would support the enactment of such a provision, and I urge my colleagues in the Senate to reject this approach.

Nor do I support efforts to place arbitrary caps on noneconomic damages. The fact that noneconomic damages are difficult to precisely value does not mean that the losses in those areas are not real. Noneconomic damages compensate individuals for the things that they value most, the ability to have children, the ability to have your spouse or child alive to share in your life, the ability to look in the mirror without seeing a permanently disfigured face. If a company acts in a manner that robs people of these precious gifts, we should ensure that the injured party can recover fully for their loss through the jury system. We should not limit the ability to recover with an arbitrary cap.

In addition, I will oppose attempts to broaden this bill beyond the area of product liability. I know that a number of Senators have broader ''civil justice reform'' amendments, that would extend the provisions of this bill to every civil litigation claim filed in State court, or medical malpractice amendments. As I mentioned above, my support for product liability reform is based both on the constitutional power given Congress to regulate interstate commerce, and the need that has been demonstrated—after many years of study—for a uniform approach in the product liability area. The debate on civil justice reform and medical malpractice should be left for another day.

This is particularly true considering the wide-ranging implications that a number of proposed amendments would have on the enforcement of our Nation's civil rights and antidiscrimination laws. Enacting the broader ''civil justice reform'' bills that have been proposed could cause title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the reconstruction-era civil rights legislation to become ''toothless tigers.'' We must not stand by and let Congress repeal our Nation's civil rights protections under the guise of civil justice reform.

Finally, I would like to express my continued opposition to the FDA excuse, a provision that Senator DORGAN and I worked to remove last year. I am pleased that Senator ROCKEFELLER and GORTON did not include the FDA excuse in this year's bill.

Mr. President, as I stated at the outset, I do not oppose some product liability reform at the Federal level. Indeed, I am pleased to see Congress debating the standards that should apply in the product liability area, and I hope to work with Senators ROCKEFELLER and GORTON to craft moderate, bipartisan legislation. I believe the Product Liability Fairness Act that was reported out of the Commerce Committee strikes a reasonable balance between the need to preserve access to the courts, and the need to curb frivolous lawsuits.

That is not to say I believe this bill is perfect. I have a number of concerns with the legislation as currently drafted, concerns that I have raised with Senator ROCKEFELLER, and concerns that my staff has made clear to Senator ROCKEFELLER and Senator GORTON's staff. In the first instance, I would like to see the punitive damage provisions altered to accord equal treatment to noneconomic damages. Under S. 565 as currently drafted, punitive damages are limited to $250,000 or three times economic damages, whichever is greater. By excluding noneconomic damages from this calculation, the bill shortchanges the women who do not work outside the home, children, the elderly, and others who may not have large amounts of economic damages. While I support the notion of making punitive damages proportionate to the harm cased by the product—the goal that the punitive damage limitation is intended to accomplish—that harm should not be limited to out of pocket costs or lost wages. Noneconomic damages can often be difficult to calculate, but that does not make them any less real. As a notion of fundamental fairness, any congressional attempts to create a punitive damage standard should include both economic and noneconomic damages in its formula.

Nor do I feel the bill as currently drafted strikes the proper balance in the area of creating ''National, uniform standards,'' it will not completely level the playing field in all 50 States. If anything, I wish the current bill went farther in pre-empting State law in the product liability area. National standards should be just that; standards that apply in all 50 States. For example, if the Federal Government wishes to establish a 20-year statute of repose, that should be the statute of repose, States should not be allowed to establish a lower statute that will prevent consumers from suing after only 12 or 15 years. Again, I have raised this concern with Senator ROCKEFELLER, and I will continue to raise it in the coming days.

Yet while S. 565 is not perfect, it represents a good start. If this bill remains substantially the same, I intend to vote for cloture, as I stated very clearly on the floor of the Senate last year. It is not appropriate for the Senate to continue to filibuster an issue that clearly needs to be addressed. The current system is too slow. The transaction costs are too high. Given that our markets are now national and global in scope, Congress, which has authority over interstate commerce, has a responsibility to examine this problem.

The issue of product liability reform has been before the Senate for well over a decade now. I believe that everyone who is interested in our Civil Justice System should have come to the table and worked with the Commerce Committee, with Senators ROCKEFELLER and GORTON to address and resolve the underlying issues. If you do not feel this bill is the right one, submit a counterproposal. If you feel there are still changes that need to be made, put them forward.

But to simply refuse to even discuss the issue is, in my opinion, irresponsible. It is gridlock. It is not in the best interest of consumers, it is not in the interests of business men and women, it is not in the interests of employees, and it is not in the interest of our country.

I do want to caution, however, that my commitment to vote for cloture is limited to the bill as reported by the Senate Commerce Committee. I do not think that I am alone in that respect; indeed, I believe that the prospects of enacting a product liability bill will be vastly improved if the Senate rejects amendments to broaden the bill beyond its current scope, or to add the dangerous, anticonsumer provisions in the House legislation. If cloture is not able to be invoked, there will be many who will try to blame the democrats. In truth, however, if this bill does not clear the Senate, it will be because the majority on the other side of the aisle was more interested in making a political point than in making a law. It will be because they failed to keep the bill narrow enough and fair enough to command the supermajority necessary to move this bill to final passage.

So, Mr. President, in conclusion I would just say I hope in the ensuing weeks we will be able to debate, and I am sure we will debate in detail, the particular provisions of S. 565. But at this point, based on the legislation before us, I am prepared to support a vote for cloture so we can actually get on the legislation and get beyond filibuster. I yield the floor.

ORDERS FOR THURSDAY, APRIL 27, 1995

Mr. SANTORUM. 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 Thursday, April 27, 1995; that following the prayer, the Journal of proceedings be deemed approved to

date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator LOTT for 10 minutes, Senator THOMAS for 15 minutes, Senator PRYOR for 10 minutes, Senator HATCH for 5 minutes, Senator HARKIN for 10 minutes, and Senator DORGAN for 10 minutes; further, at 10:30, the Senate immediately resume consideration of H.R. 956, the product liability bill.

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

Mr. SANTORUM. For the information of all Senators, votes can be expected to occur throughout Thursday's session of the Senate and the Senate may be asked to be in session into the evening in order to make progress on the pending bill.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. SANTORUM. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that, in further respect of the passing of the Senator from Mississippi, Senator John Stennis, the Senate stand in recess under the provision of Senate Resolution 111.

There being no objection, the Senate, at 9:10 p.m, recessed until Thursday, April 27, 1995, at 9:30 a.m.