United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *104th* CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, TUESDAY, APRIL 25, 1995 *No. 67*

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

TUESDAY, APRIL 25, 1995

(Legislative day of Monday, April 24, 1995)

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

PRAYER

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

Let us pray:

Holy spirit of God, the greatest counselor in the world, we open our minds, hearts, wills, and bodies to the infilling of Your power. Infinite Intelligence, grant us power to understand Your solutions to our problems. Unlimited Love, fill our hearts with healing love from which flows the affirmation that others need. Liberating Spirit, set us free from bondage of our wills, so intent on what we want that we miss the guidance of what You have for us. Artesian Strength, energize our bodies for the arduous pressures of the day ahead.

Spirit of the living God, fall afresh on us. Peel back the icy fingers of the fist of fear that hold our hearts in the grip of grimness, that make us cautious when faced by great challenges, and cause us to be timid in life's testing hours. Spirit of Life, help us pull out all the stops so You can make great music of joy in our souls. Radiate Your hope through us. Make us positive people who are expectant of Your best for us and our Nation. Give us the authentic charisma that comes from Your grace: gifts of wisdom, knowledge, discernment, and love.

And today, as we begin our work, we remember Senator and Mrs. Heflin and ask You for Your continued healing power in Mike, his wife. We thank You for the good reports of yesterday, and ask You to place Your loving arms around her with healing grace and hope.

This is the day the Lord has made. So lead on, O Lord. We rejoice and are glad in You. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from New Mexico is recognized.

SCHEDULE

Mr. DOMENICI. Mr. President, this morning the leader time has been reserved, and there will be a period for morning business until the hour of 12 noon with Senators permitted to speak for up to 5 minutes each, with the exception of the following: Senator DOMENICI for 60 minutes; Senator THOMAS for 30 minutes; and Senator BAUCUS for 15 minutes.

At noon today the Senate will proceed to a 15-minute vote on the adoption of Senate Resolution 110, a resolution condemning the bombing of the Federal building in Oklahoma City.

The Senate will recess between the hours of 12:30 and 2:15 for the weekly policy luncheons.

At 2:15, following the luncheons, the Senate will resume consideration of H.R. 956, the product liability bill.

Members should, therefore, be aware that further rollcall votes can be expected throughout today's session of the U.S. Senate.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon with Senators permitted to speak therein for not to exceed 5 minutes with the following Senators to be recognized for the time specified: The Senator from New Mexico [Mr. DOMENICI], is recognized to speak for up to 60 minutes. The Senator from New Mexico may proceed.

Mr. DOMENICI. Thank you very much, Mr. President.

Mr. President, Senator NUNN from Georgia will be along soon and I intend to share my 60 minutes with him. If he were here, I would let him open the discussion and follow him. But in his absence, I am sure he would want me to proceed.

(The remarks of Mr. DOMENICI and Mr. NUNN pertaining to the introduction of S. 722 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Twenty-five minutes fifteen seconds.

Mr. DOMENICI. Would the Senator from Nebraska like 10 minutes, 5 minutes?

Mr. KERREY. Ten minutes.

Mr. DOMENICI. I yield 10 minutes to the Senator from Nebraska.

Mr. KERREY. Mr. President, I ask unanimous consent to be added as an original cosponsor to this legislation.

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

Mr. KERREY. I thank the Chair.

(The remarks of Mr. KERREY pertaining to the introduction of S. 722 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

FRESHMAN FOCUS

Mr. SANTORUM. Mr. President, I rise today as a replacement, pinch-hitting for the Senator from Wyoming, Senator THOMAS, who usually guides this half hour of time for the freshmen. We call this our freshman focus, 11 freshman Republicans who on Tuesday and Thursday mornings come to the Senate floor to talk about issues of importance to the Senate, to the country. Senator THOMAS has done a fine job in doing that. He is at the National Press Club today, so he is not available to do that. But I will do my best to fill in for him and try to lead the discussion this morning with my colleague from Maine and others who will appear on the floor to talk about our theme for today, which was a question I received a lot in town meetings and other meetings when I was back in Pennsylvania, when I was home in the last few weeks: What is ahead for the Senate? What is the Senate going to be doing with not just the Contract With America, but a whole bunch of other things?

So we thought we would take on that question head on: What is the agenda for the Senate? What are we going to be doing? Is it relevant, and how relevant is it, for the American public and what they are concerned about?

I had lengthy discussions at home at these town meetings and I got a good feel that we are on the right track. What is in our sights here in the U.S. Senate is on track with where the American public would like us to go.

The issue we are debating here on the floor today and for the next week or so is an issue of very great importance to the economic well-being of this country, legal reform. We have a much too costly legal system. It is one that makes us uncompetitive and inefficient, and one that is not fair to society as a whole. While we may have people, individuals, who hit the jackpot and win the lottery in some cases, that is not exactly what our legal system should be designed to do. It should have the societal benefit of spreading risk around, and also creating justice not just for the individual but for society as a whole. I do not think our system achieves that as well as it can, and I think legal reform we are facing here on the Senate floor will be a help to everyone in our society. That, I believe, is very relevant for the average American.

The other thing we are obviously going to be bringing up, that may be somewhat expedited as a result of the tragedy in Oklahoma City, is a crime bill with very tough provisions on antiterrorism that is going to be, I believe, a bipartisan effort. Senator HATCH has talked about moving forward the crime bill, parts of which have passed the House, and moving it to the Senate floor with some tough antiterrorism measures, to quickly respond. Hopefully, the crime bill we are trying to push through will get an expedited path as a result of some of the activities over the last week or so. Hopefully, the Senate can quickly respond. Again, it is a matter of whether the other side is going to allow this body to move in an expeditious though thoughtful way or whether we are going to play delaying tactics and stalling tactics, to be a roadblock to progress.

There are two other things I want to focus on. If I heard about an issue back home from folks who were trying to make a living, small businessmen in particular, it was regulatory reform. More than anything else, having the Government regulators be more reasonable in dealing with the laws that we put forward and for the Congress and for the regulators to work together to put forward regulatory schemes that make common sense, not these overly bureaucratic and harmful procedures we put in place today to overregulate our society. Again, they cause a lot of personal pain and suffering and problems and affect lives in ways that are almost incalculable as a result of the scheme we put in effect over the last 30 or 40 years. We need to look at this, recreate Government anew, do something commonsense oriented to make Government work better for people back home. I believe the regulatory reform measures we will be considering here in the next month or so will go a long way toward doing that.

The last thing we are going to be looking at, and I will combine these two, is we are going to be looking at a tax cut bill and we are going to be looking at a budget resolution that is going to put this country on a road to a balanced budget in 7 years. I know the Senator from Maine is going to talk about this in detail as a member of the Budget Committee. In fact, we are going to have on the floor of the Senate a budget that will bring us to balance in 7 years. We will be able to vote for a balanced budget. I think it is the first time that has been the case, that the majority party in one of the bodies has proposed a balanced budget, since 1969. So it is in fact historic and it is a great opportunity. It is a great challenge for not only the Members of the Senate, but for this country, to take a step back and look and see what we are going to do, not just to get the numbers to add up right but simply how are we going to save this country? How are we going to provide for some stability and financial future of this country?

This is not about just balancing the budget; this is about saving the country. Because if we do not take this course, if we do not act seriously on this fiscal crisis we are in right now, it is only going to get harder in the future. It does not get easier. Anyone who will tell you we can just put this off a little bit and it will get easier in the future is wrong. The budget deficit gets worse and worse the longer we wait. You jeopardize programs like Medicare and Social Security and every other popular program that is here in Washington by delaying and playing politics with this issue.

I am hopeful we will not play politics, that we will be able to stand up here and have an intelligent debate on the floor of the Senate and talk about what we are going to do to set priorities and put this country on a sound fiscal footing in the future so we can make sure people who are banking on Social Security and Medicare in their retirements, people who need the welfare systems that we have and hopefully will be able to reform, that those systems will be available and are not just going to be squeezed out because of our inability to set fiscal priorities today. The chance of them being squeezed out in the future is not just a possibility, it is a certainty. We will squeeze these programs out, a lot of them, if we do not set our house in order now.

So I am excited about that. I think it is a great opportunity for the Senate to shine, for us to really step forward and have this kind of deliberative discussion about issues at the core of who we are as a country and what direction we are going to take. I am anxious to get ahead, to look ahead at the next few months and see what we are going to do here in the U.S. Senate. I think it bodes well for this country for us to have this kind of aggressive agenda for the American public.

I will be happy to yield 5 minutes to the Senator from Maine.

A BALANCED BUDGET

Ms. SNOWE. Mr. President, I thank the Senator for yielding. I am pleased to be able to join my freshman colleagues in talking about the agenda for the coming weeks and months as we return from our spring recess and have the opportunity to discuss with our constituents exactly what is on their minds. I can assure you, it is the same thing that it was in November.

People are still clamoring for institutional, economic, and political change.

They recognize that some of the monumental achievements that we have already made in the first 100 days, many of the issues that have laid dormant in this institution for years and years, have been acted upon, such as requiring Congress to live by the same rules that apply to the rest of society, stopping the tide of unfunded mandates, and giving the President line-item veto authority. So we have made progress. But they want to continue our assault on the status quo. I cannot think of a better way to demonstrate our commitment to changing the status quo than to show the American people that deficit reduction and balancing the Federal budget is going to be on the top of our agenda.

I know that many people have said here on the floor of the Senate when we were debating a constitutional amendment to balance the budget that we do not need a constitutional amendment, that it is not necessary. Unfortunately, history has just disproved us in that regard because we have had a fiscal losing streak with 26 years of unbalanced budgets. Mr. President, 1969 is the last time in which we had a balanced Federal budget.

I hope that we can disprove history. I hope that we are able as we meet this week in the Senate Budget Committee on Thursday to begin the process of marking up the budget resolution that we will engage in a bipartisan effort to balance the Federal budget. Our goal is to put our budget on a glidepath toward balancing it by the year 2002.

So I hope all who have mentioned that we do not need a constitutional amendment will join us in that effort to ensure that we will in fact have a statutory commitment toward the balancing of the Federal budget.

The administration unfortunately has perpetuated the fiscal status quo with a budget that was submitted by the President several months ago. In fact, back in 1992 the President said he would offer a 5-year budget plan that would balance the Federal budget. He has not done that. He then said that he would reduce the Federal budget deficit by half by 1996. Of course, that has not occurred. Instead, we received a budget that only eliminates one agency, the Interstate Commerce Commission, out of a grand total of a budget of $1.2 trillion. In fact, the Congressional Budget Office reestimated the administration's projections on deficits. And it is quite alarming as well as disturbing when you see the upward trend of the deficits as well as the interest payments. That is what makes our action on the budget deficit and balancing the Federal budget so compelling.

According to the CBO, the 1996 deficit will be $211 billion, not the $197 billion projected by the administration. The 1998 deficit will rise to $231 billion, not the $196 billion projected by the administration. In 1999, the deficit will reach an estimated $256 billion, far from the $197 billion the administration had forecasted. Finally, in the fiscal year 2000, the Congressional Budget Office said the deficit will reach $276 billion rather than the $194 billion the administration has projected.

It means according to CBO reestimates that the size of our national deficit over the next 5 years will increase by 55 percent. It will grow from 2.5 percent of the gross domestic product to 3.1 percent of the GDP, which is contrary to what the administration had indicated, that in fact they had said that the deficit would be 2.5 percent of GDP and decline to 2.1 percent of GDP. Obviously, that is not now the reality. The gap between the administration's projections on the deficits and the Congressional Budget Office really amounts to more than $209 billion that will be spent over the next 5 years; $209 billion. It is incredible when you consider the fact that by the year 2000 we will in fact have had our revenues exceed the 1995 revenues by $323 billion.

So you would say then we must have a much smaller deficit in the fiscal year 2000. Well, no. We are not going to. We are going to have a deficit of $273 billion. It will be $100 billion more than it will be in 1995, even though we will have $323 billion more in additional revenue.

We will be spending $422 billion over the next 5 years. That represents a 28-percent increase during a time when inflation is projected to rise by half that rate.

The administration said it is going to cut the budget over the next 5 years by $144 billion. In fact, it is being reestimated by the Congressional Budget Office. In fact, the administration's budget will only reduce Federal spending by $32 billion over the next 5 years, meaning just about $6 billion a year, thirty-nine one-hundredths of 1 percent of total Federal spending, hardly enough, and certainly is not going to put us on a stable fiscal path for the future. And that is what we are talking about, the future for this country because deficits are affecting not only taxes but productivity, savings, the deficit, and employment. It affects all of those categories. We need to be investing in the future. Otherwise, we are going to create a second-rate economy.

That certainly is not exaggerated because 1969, the last time the Federal Government had a balanced Federal budget, the dollar traded for 4 German marks and 360 Japanese yen. And, since then, while the Federal debt has increased by 1250 percent, or $4.5 trillion, the dollar has lost two-thirds of its value against the mark, and three-fourths against the yen.

I guess in reality what we are saying is that it will continue to cost the American people millions, if not billions, of dollars because the link between a lackluster and unfocused and uncontrolled Federal budget policy and a decline of the dollar is indisputable. In fact, the Federal Reserve Chairman, Alan Greenspan, told the House Budget Committee recently that all told a Federal program of fiscal restraint that moves the deficit finances to sounder footing almost surely will find a favorable reception in financial markets. He added that a key element in dealing with the dollar's weakness is to address our underlying fiscal balance. In layman's terms that means only one thing. It means balancing the Federal budget.

So I hope we can work in unison on a Republican and Democratic basis and in conjunction with the administration to produce just that, a balanced Federal budget, not only for this generation but future generations to come.

Mr. President, I yield the floor.

Mr. SANTORUM. Mr. President, at this time I would like to yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. KYL. Mr. President, I thank my colleague from Pennsylvania, and would also just say in response to the remarks of our colleague from Maine that she has been a long-time advocate beginning with her service in the House of Representatives for sensible fiscal policy, and in particular support for the balanced budget amendment. I just again express my appreciation to her for all of the hard work that she did there and for what she has since carried forward to this body in attempting to get us to support the balanced budget amendment this year. We failed by one vote. But I think, as has been noted, we are going to get it passed sooner or later.

One of the things my constituents told me during the last 2 weeks when I was out in Arizona was that we need to balance the Federal budget. In fact, if there was any one theme that came across during the visits that I had with people all over the State in my tour of the State, it was that the Senate needed to keep up the good work that the House began, and that includes passing the balanced budget amendment. When I asked them what they thought about the first 100 days and the House Contract With America, they were overwhelmingly in support of it.

We traveled during the first week. We got in my old Suburban and traveled to Miami and Globe and Thatcher, and Pima. These are names that are not known to very many of you, but they are little towns in Arizona. We had a town hall meeting in Safford with 130 people one night. They were all just as interested and engaged as you would hope that our American citizens would be on these issues that we have been working on here.

Their primary message was we are appreciative of what the House did. Now you in the Senate need to do the same thing. They were pleasantly surprised when I noted we had already passed three of the contract items here in the Senate. That message had not really gotten out too much. They were also somewhat skeptical that the Senate would do as well as the House, and

in particular with regard to the budget issues.

We went on to the small towns of Willcox, and Benson. These are ranching communities primarily, and regulatory reform is very high on their agenda. They deal with the Federal Government every day because many of them ranch on Federal lands and in other respects have dealings with the Federal Government, which are not always the most pleasant.

So their view was that regulatory reforms, the kind of things that the Senate will be marking up in the Judiciary Committee tomorrow, the Dole regulatory reform bill, are the kind of reforms that they want us to carry forward. Of course, that was done in the House of Representatives as part of its Contract With America.

Then over to Yuma, AZ, up to Flagstaff, AZ, the Grand Canyon, where there is obviously a need to support our National Park System to begin to make it a better experience for the now millions of people who visit the Grand Canyon every year and also to balance very carefully the environmental concerns with the other economic needs of our citizens.

All of these subjects were discussed during these 2 weeks as I went around the State, but there is a sense of optimism that we have actually changed things. There is a desire that we keep going. I think there is still a residuum of skepticism that the Congress really will follow through with these promises, but people are very pleasantly surprised that so far it seems to be happening.

Then finally, Mr. President, when the very tragic events of just a week ago began unfolding in Oklahoma City, it began to remind people all over this country of how unified we are as a people in condemning that kind of violence, in feeling the most heartfelt sympathy for the victims of the tragedy, and for sharing a commitment to bring to justice the people who are responsible.

I spent a good deal of my time, since I serve on both the Intelligence Committee and the Judiciary Committee, talking to people about the threats that are out there and for the need to support the agencies that we count on to prevent these threats or to bring to justice the people responsible when they occur. Our agencies, such as the Central Intelligence Agency and the Federal Bureau of Investigation, we are extremely pleased with the way this investigation has gone so far, but we know that there is much work to be done.

It is important for us to recognize that this does not just happen automatically. It happens because hundreds of dedicated Americans are working very long hours under difficult circumstances to find out what these kinds of groups are up to, to try to prevent them from acting and, when they do, to bring them to justice. We cannot reflect on it just when there is a tragic event such as this. We have to support these agencies throughout the year and year in and year out.

I am very disturbed by the calls that I have heard in the beginning part of this year from those who would dismantle the Central Intelligence Agency, for example, because the cold war is over, not appreciating the fact that there are hundreds of organizations around the world, some State sponsored, others not, but all of which have in mind conducting the kind of terrorist activities that occurred in Oklahoma City. It can happen from without our borders as well as within, and it is critical that we remember that and support these organizations when the appropriations issues come before us very soon. It is the only way we will be able to bring to justice the people responsible for this kind of heinous activity.

So, Mr. President, it was an Easter recess that was edifying for all of us and at the end something that because of the tragedy I think unified us all in expressing support for the people in Oklahoma City.

I thank the Chair.

Mr. SANTORUM. I thank the Senator from Arizona for his fine remarks and for his zealous participation in trying to get the Senate moving and working. This is a tough place to get activated, but the Senator from Arizona has been a delightful thorn in the side of a lot of folks around here to try to get things going, and I commend him for his activity.

Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Eleven minutes and forty seconds remain.

Mr. SANTORUM. I yield 6 minutes to the Senator from Tennessee, Senator THOMPSON.

The PRESIDING OFFICER. The Senator from Tennessee.

NO TIME TO GO LUKEWARM

Mr. THOMPSON. Mr. President, I thank my colleague from Pennsylvania.

I, first of all, wish to also commend the Senator from Arizona. I think his remarks concerning the need for our strong law enforcement agencies was most timely and most eloquent. Before I address the main point I wanted to make, I must reinforce that.

I think too often in this country, whether it be our law enforcement agencies or our military, once we pass a crisis, it is as if we do not need them anymore; once we have won a war, it is as if we do not need the military anymore. And historically we have downsized too rapidly and too much. I think sometimes when things are peaceful here domestically, we feel we do not need a strong CIA, we do not need a strong FBI and law enforcement authorities. These people are out here every day and, as the Senator pointed out, they need our support on a continuous basis. They need the support of the Congress on a continuous basis, not just when there is a crisis, when people tend to overreact.

So I am very proud of these agencies. We must do everything we can to make sure that they remain strong, not talking about cutting back the budgets of these agencies, certainly not talking about eliminating them as some have done because they have gotten in a little trouble, and certainly they need oversight. But I think the tragic events of the last several days have just gone to underscore the fact that we must remain strong both domestically and with regard to foreign matters.

I was also impressed with what my colleague from Arizona said concerning the time he had over this last recess. I shared many of the same experiences he had. We ran the last campaign based on a very simple notion, and that was the notion of changing the way we do business in this town, in the Congress of the United States. And now we begin to see in newspaper articles, people have gone back home, and the President indicates that some people are not so sure, maybe things are moving too fast, people are not willing to make sacrifices—sure, they want these things done in the broad sense of the word, but when it comes to them, individuals are too selfish to be willing to make any kind of incremental adjustment if it affects them directly; et cetera, et cetera, et cetera.

That is not my experience. I have gone back to Tennessee every weekend since I was elected to the Senate. These last few days have been no different than any other days I have spent out in the country, in country stores, in cafes, talking to people. The message that I get consistently is that this is no time to go lukewarm on our basic commitments, on basically what we ran on. It is not time to go soft on our commitment for a balanced budget amendment. It is not time now to get cold feet on deregulation. It is not time to get lukewarm on welfare reform.

These things are our commitments, these things they expect us to follow up on, and they look forward to the leadership that they think we are providing. They only ask that we be fair.

I have never talked to a grandparent in the State of Tennessee who was not willing to make some incremental adjustment if they thought it would go to the benefit of their grandchild. And that is the message we have to bring back here. For all of those among our colleagues and in the media who think that Americans are so individually self-centered and selfish that we are not willing on an individual basis to do the things necessary to make for a stronger country, to make a stronger country for our children and grandchildren, I will have to point out to them that they are very much mistaken. The House of Representatives, of course, has been very active and very busy. They have gotten a lot of attention over their agenda and what they have done.

I would just like to say this. Regardless of what any individual might think about the Contract With America or any particular provision of the contract, the House of Represenatives did a very, very significant thing that overshadows any individual provision in that contract or the contract in its totality, and what they did was what they said they were going to do. Never before in the history of this country was a program so plainly and simply laid before the American people which said, if we get elected, this is what we will do.

They got elected and then they went about doing it. Now it has come to the Senate. It has been pointed out many times that the Senate is not the House. It has been pointed out that things will move slower in the Senate because that is what it is designed to do. This is where the coffee is poured into the saucer to cool.

All of that is true. All of that is well and good. I have no problem in spending days on end in the Senate debating the national issues, debating the issues of strong contention where people have legitimate concerns over issues of broad policy that affect the future of this country. I have no problem with debating those matters on end. We do not have any agenda over here except to do the right thing in the right amount of time.

What I have problems with is taking days on end on matters which essentially are not controversial, where at the end of the day they pass by 90 or 95 votes to 5. I see no reason why we should get hung up on delay over here for delay's sake. I hope that does not happen. If we have controversial matters that take days, let us take them. But if we have things that we know the American people want and we know that most of the Members of this body want, I say let us get on with it.

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

Mr. THOMPSON. I thank the Chair. I yield the floor.

Mr. SANTORUM. Mr. President, I thank the Senator from Tennessee for his fine remarks and very cogent points on a number of issues, particularly his comments on our downsizing too quickly, not just with the military but with our domestic intelligence agencies, law enforcement agencies. I think the Senator has hit the nail right on the head there and I congratulate him for his statements on that matter.

I would like to yield our remaining time that was allocated to us this morning to the Senator from Oklahoma, who I know will be in the Chamber shortly with a resolution concerning the tragedy in his home State of Oklahoma, to talk about the agenda for the future here in the Senate.

Senator INHOFE.

The PRESIDING OFFICER. There are 4 minutes and 50 seconds remaining.

The Senator from Oklahoma.

THE AGENDA

Mr. INHOFE. Thank you, Mr. President, and I thank the Senator from Pennsylvania for the time.

As he stated, in just a few minutes, Senator NICKLES and I will make some comments concerning a resolution that will be voted on at noon today having to do with the disaster that struck Oklahoma less than a week ago.

However, I do think on this subject of the agenda that there is a misconception that is floating around out there that the Senate has not been doing anything because most of the focus has been on the other body. And it is understandable, because that is where most of the activity was. Procedurally, things happen quicker in the House than they do in the Senate.

For those of us who have served in the House of Representatives and are now serving in the U.S. Senate, I can understand for the first time in my lifetime why our Founding Fathers perceived that we should have a bicameral system. And, in fact, things are more deliberate here. And I think it is, without pointing any fingers or being critical, that many things pass the House of Representatives with the understanding that they know that it will get a more thorough examination when it gets to the Senate.

But, having said that, I would have to say that the Senate has done an incredible amount of work. While I cannot document it, I would suggest that the Senate has accomplished more in the first 90 days or the first 100 days of this session than they have at any other time. We passed the line-item veto. We passed congressional accountability, forcing Members of Congress to live under the same laws that they pass. We passed unfunded mandates. Those of us who have previously been mayors of major cities understand that that is a major problem facing the cities and other political subdivisions around the country. And we have done that. We have had moratoriums passed. I really believe that the Senate has acted responsibly, but in a much more deliberative way.

Now the time has been pretty much occupied on what are we going to do on the budget. I think it is somewhat tragic, and I have to be critical of our President. When he talks about the deficit reduction, he makes comments as if we are actually doing something about reducing the debt. And it is a matter of terminology, that if there is anything that can come from this debate, I hope that the American people, and I think they are, are aware right now that we are talking about two different things when you talk about debt and deficit.

In fact, the President's budget that has come in has built into it deficits each year that will have a dramatic increase on our Nation's debt.

I am still of the belief that we in Congress, in both Houses of Congress, as well as the administration, are incapable of fiscally disciplining ourselves in the absence of a balanced budget amendment to the Constitution. And I really believe it is going to happen. Of course, it did pass the other body, and it lacked one vote of passing in the U.S. Senate.

I would remind those who share my concern for this nonpassage that it is under a motion for reconsideration and that we are going to be able to do something about it, I believe, before this term is over.

So, Mr. President, Senator NICKLES will be joining me in just a moment and we will have an opportunity to talk a little bit about the tragedy that struck my State of Oklahoma.

I yield back my time.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from New York.

Mr. MOYNIHAN. Mr. President, I ask that I might be allowed to speak for up to 12 minutes on the matter which the Senator from Oklahoma indicated will be the subject of the remaining of our morning debate.

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

Mr. MOYNIHAN. I thank the Chair.

THE PARANOID STYLE IN AMERICAN POLITICS

Mr. MOYNIHAN. Mr. President, as we think and, indeed, pray our way through the aftermath of the Oklahoma City bombing, asking how such a horror might have come about, and how others might be prevented, Senators could do well to step outside the Chamber and look down The Mall at the Washington Monument. It honors the Revolutionary general who once victorious turned his army over to the Continental Congress and retired to his estates. Later, recalled to the highest office in the land, he served dutifully one term, then a second, but then on principle not a day longer. Thus was founded the first republic, the first democracy since the age of Greece and Rome.

There is not a more serene, confident, untroubled symbol of the Nation in all the Capital. Yet a brief glance will show that the color of the marble blocks of which the monument is constructed changes about a quarter of the way up. Thereby hangs a tale of another troubled time; not our first, just as, surely, this will not be our last.

As befitting a republic, the monument was started by a private charitable group, as we would now say, the Washington National Monument Society. Contributions came in cash, but also in blocks of marble, many with interior inscriptions which visitors willing to climb the steps can see to this day. A quarter of the way up, that is. For in 1852, Pope Pius IX donated a block of marble from the Temple of Concord in Rome. Instantly, the American Party, or the Know-Nothings—''I know nothing,'' was their standard reply to queries about their platform—devined a Papist plot. An installation of the Pope's block of marble would signal the Catholic uprising. A fevered agitation began. As recorded by Ray

Allen Billington in ''The Protestant Crusade, 1800–1860'':

One pamphlet, ''The Pope's Strategem: 'Rome to America!' An Address to the Protestants of the United States, against placing the Pope's block of Marble in the Washington Monument'' (1852), urged Protestants to hold indignation meetings and contribute another block to be placed next to the Pope's ''bearing an inscription by which all men may see that we are awake to the hypocrisy and schemes of that designing, crafty, subtle, far seeing and far reaching Power, which is ever grasping after the whole World, to sway its iron sceptre, with bloodstained hands, over the millions of its inhabitants.''

One night early in March 1854, a group of Know-Nothings broke into the storage sheds on the Monument Grounds and dragged the Pope's marble slab toward the Potomac. Save for the occasional ''sighting,'' as we have come to call such phenomena, it was never to be located since.

Work on the monument stopped. Years later, in 1876, Congress appropriated funds to complete the job, which the Corps of Engineers, under the leadership of Lt. Col. Thomas I. Casey did with great flourish in time for the centennial observances of 1888.

Dread of Catholicism ran its course, if slowly. Edward M. Stanton, then Secretary of War, was convinced the assassination of President Lincoln was the result of a Catholic plot. Other manias followed, all brilliantly described in Richard Rofstadter's revelatory lecture ''The Paranoid Style in American Politics'' which he delivered as the Herbert Spencer Lecture at Oxford University within days of the assassination of John F. Kennedy. Which to this day remains a fertile source of conspiracy mongering. George Will cited Hofstadter's essay this past weekend on the television program ''This Week With David Brinkley.'' He deals with the same subject matter in a superb column in this morning's Washington Post which has this bracing conclusion.

It is reassuring to remember that paranoiacs have always been with us, but have never defined us.

I hope, Mr. President, as we proceed to consider legislation, if that is necessary, in response to the bombing, we would be mindful of a history in which we have often overreacted, to our cost, and try to avoid such an overreaction.

We have seen superb performance of the FBI. What more any nation could ask of an internal security group I cannot conceive. We have seen the effectiveness of our State troopers, of our local police forces, fire departments, instant nationwide cooperation which should reassure us rather than frighten us.

I would note in closing, Mr. President, that Pope John Paul II will be visiting the United States this coming October. I ask unanimous consent that Mr. Will's column be printed in the RECORD.

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

[From the Washington Post, Apr. 25, 1995.]

FEVERED MINDS, MARGINAL MEN

(By George F. Will)

The Tennessee marble on the side of the Morgan bank building in lower Manhattan still bears, defiantly, scars inflicted on Sept. 16, 1920, when a horse-drawn wagon loaded with sash weights exploded amid a lunchtime crowd. Among those blown to the pavement was Joseph P. Kennedy. He was one of the fortunate. The blast, which shattered windows over a half-mile radius killed 30 and injured more than 100.

There were no arrests, or explanations. Someone probably had taken too seriously some socialist critique of capitalism, but the incident fed J.P. Morgan Jr.'s many phobias, which included: ''The Jew is always a Jew first and an American second, and the Roman Catholic, I fear, too often a papist first and an American second.''

Today, as the nation sifts and sorts the many jagged and tangled fragments of emotions and ideas in the aftermath of Oklahoma City, it should remember that this was not America's baptism of lunacy. Bleeding Oklahoma City is a few hundred miles down the road from Pottawatomie in what once was bleeding Kansas, scene of a memorable massacre. John Brown's body lies amoldering in the grave, but his spirit—massacres in the name of God—goes marching on in the paranoia of a few.

A very few, on society's far fringes. Which is progress. After Brown killed the mayor of Harpers Ferry and seized the arsenal, he was sentenced to be hanged. Yet America's preeminent intellectual, Ralph Waldo Emerson, said of him, ''That new saint, than whom nothing purer or more brave was ever led by love of men into conflict and death . . . will make the gallows glorious like the cross.'' Morgan wrote the words above about Jews and Catholics to A. Lawrence Lowell, president of Harvard, of which institution Morgan was an overseer. It is unthinkable that such sentiments could be expressed in such circles today.

Today when the fevered minds of marginal men produce an outrage like the Oklahoma City bombing, some people rush to explain the outrage as an effect of this or that prominent feature of the social environment. They talk as though it is a simple task to trace a straight line from some social prompting, through the labyrinth of an individual's dementia, to that individual's action.

Now, to be sure, it is wise to recognize that ideas, and hence the words that bear them, have consequences. Those who trade in political ideas should occasionally brood as William Butler Yeats did when he wrote this about the civil war in Ireland:

Did that play of mine send out
Certain men the English shot?
Did words of mine put too great strain
On that woman's reeling brain?
Could my spoken words have checked
That whereby a house lay wrecked?

However, an attempt to locate in society's political discourse the cause of a lunatic's action is apt to become a temptation to extract partisan advantage from spilled blood. Today there are those who are flirting with this contemptible accusation: If the Oklahoma City atrocity was perpetrated by individuals gripped by pathological hatred of government, then this somehow implicates and discredits the current questioning of the duties and capacities of government.

But if the questioners are to be indicted, the indictment must be broad indeed. It must encompass not only a large majority of Americans and their elected representatives but also the central tradition of American political thought—political skepticism, the pedigree of which runs back to the Founders.

The modern pedigree of the fanatics' idea that America's government is a murderous conspiracy against liberty and decency—a money-making idea for Oliver Stone, director of the movie ''JFK''—runs back to the 1960s. Those were years John Brown could have enjoyed, years when the New York Review of Books printed on its cover directions for making a Molotov cocktail, and a student died when some precursors of the Oklahoma City fanatics practiced the politics of symbolism by bombing a building at the University of Wisconsin.

Today, when some talk radio paranoiacs spew forth the idea that the AIDS virus was invented by Jewish doctors for genocide against blacks, it is well to remember that the paranoid impulse was present in the first armed action by Americans against the new federal government. During the Whiskey Rebellion 200 years ago a preacher declared:

''The present day is unfolding a design the most extensive, flagitious and diabolical, that human art and malice have ever invented. . . . If accomplished, the earth can be nothing better than a sink of impurities.''

It is reassuring to remember that paranoiacs have always been with us, but have never defined us.

Mr. MOYNIHAN. Mr. President, seeing the distinguished Senators from Oklahoma on the floor, I know we all look to hear from them. I thank the President and yield the floor.

Mr. INHOFE. I ask unanimous consent to proceed as in morning business for 10 minutes.

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

DISASTER IN OKLAHOMA

Mr. INHOFE. Mr. President, 5 days ago we had a disaster that occurred in Oklahoma. I happened at the time to be in Dallas in a regional meeting on base closure when I got a call from the President of the United States. At that time, the entire Nation, only hours after the blast, was watching as the smoke still had not yet cleared.

The President advised me as to what the Federal Government was doing. He told me about the FEMA team that was coming in, about the FBI, about law enforcement, all having to do with the tragedy, and asked if there was anything more that I could think of that could be done from the Federal level. Of course, I told the President there was nothing else I could think of that could happen, and I proceeded back to Oklahoma.

When you see something like this that happens and you see the resources that are poured in from the Federal Government, the State government, the city government, but then most of all from the individuals, it is, indeed, heart warming. I agree with Billy Graham, during the memorial service, when he made the statement that it draws us together, it brings out the best in people when a tragedy of this nature takes place. It is one thing to watch it on the television, and it is another thing to experience it knowing that you have personal friends that are

inside the building. And as we speak today, I have personal friends that are inside the building. It was 5 days ago—5 days and 1 hour ago—that the blast went off. When you look at the building and see that it happened from the north side, the lower half of the building on the south side is still intact to some degree. I have hope and faith that there will be some individuals who are still alive in the building.

But when I think back and remember the 4 days that I spent over there, some of the experiences that we have had are very difficult to describe. My son is an orthopedic surgeon. There is a doctor who practices with him. The doctor had to go in and amputate a lady's leg, in order to extract her alive from the rubbish—it was a decision that she had to make—with no anesthetic. Do you want to die or do you want us to take your leg off and pull you out? And she chose the leg.

On the first night when the rains came and it turned cold, I watched in cadence some 200 firemen marching down with all their regalia on—their crash helmets, their fire suits, their boots—knowing that 40 at a time would have to go inside this building and crawl around on their hands and knees, not knowing whether the structure of the building would hold up and allow them to remain alive. They did risk their lives. I was told that there was not one that went in that was ordered in. They all volunteered to do it. As you know, we have lost some lives of those who have been a part of the medical and rescue teams.

During this time, we had an occasion to look at where do we go from here? I was asked by the President 2 hours after the blast, ''What could be done to preclude something like this from happening?'' I have come to the conclusion that nothing in terms of added security or nothing in terms of taking away more freedoms is going to preclude some mad person from doing something like this if he has his mind set on doing it. This was a mobile unit, it was an explosion put together using fertilizer, using things that are certainly legal on the market. And if we were to take those things off the market, they would find something else, we know that. It would just make it more challenging to them.

I think that if we try to approach this providing more security, we are wasting our time. However, I do think there are some things that can be done. Senator NICKLES, Senator DOLE and I have submitted a resolution which we will be voting on in just a few minutes.

The resolution calls for condemning the violence in the strongest possible terms. We send condolences to the families. It applauds the rescue workers and supports the death penalty and commends the President and the Attorney General for their quick action. But it also pledges to approve legislation to combat terrorism.

I remember in 1990 when we had the airport security bill. I had an amendment on the floor—at that time, it was in the other body—to have the death penalty in cases where a terrorist was carrying out a hijacking and it resulted in a death. You never heard so many bleeding hearts in your life standing up saying, ''You can't do that, that's inhumane.'' I believe something like that today will pass. While nothing good comes from tragedies like this, if anything good were to come, it would be that we are going to be able to get tough on these guys and actually punish them.

I look at our system—I am not a lawyer—but when I see Roger Dale Stafford, of the Sirloin Stockade murder, sitting there watching color TV year after year, when I see that it takes an average of 9½ years to carry out an execution, then something is wrong.

I had a debate during the course of this with Mr. Ron Cubie, who is the defense lawyer in the World Trade Center case. He was contending that the 1994 crime bill was one that could take care of problems like this, that it provided the death penalty in case of terrorism. That is not true. The 1994 crime bill was a farce. It did not provide any exclusionary rule reform. It did not provide any habeas corpus reform. So while they had on record the death penalty, they did not do anything about the endless delays that keeps the invocation of the death penalty from becoming a reality.

That being the case, there is no deterrent. It is no deterrent for a terrorist who is proposing to do something as was done in Oklahoma 5 days ago. If he thinks the very worst scenario, the worst thing that can happen to him, is that he is going to wait 9½ years and then be executed, he looks at our system and laughs at our system.

I am one of those rare individuals who honestly believes in his own heart that punishment is a deterrent to crime. And when we wait for the punishment, long delayed periods, many of those people are waiting in an environment that is more livable than the environment that they are accustomed to. And to many of the people who might be involved from some other nations, Middle Eastern nations, that is not a deterrent. I have long sensed, in the years that I spent in the other body, that one of the problems we have in combating crime in this country is that the majority of people in Congress prior to the election of November 8 honestly did not believe in their hearts that punishment was a deterrent to crime. Now we have the ACLU and these organizations sitting around saying that we are so concerned about these poor people who are involved in these crimes. We have been much more concerned about the criminals than we have been about the victims.

Mr. President, that is something that is going to change. Maybe it took this tragedy in Oklahoma to make that change. I suspect that is the case. There are some bills that have been introduced prior to this tragedy—one was introduced by Senators BIDEN and SPECTER—that are going to do something about our ability to use resources out there to bring people to justice. Wiretapping for law enforcement officers to use. Is that an invasion of privacy? Yes, maybe it is. But somebody has to do something about it. We have a lot of procedural things that can be done that are addressed in that legislation that I think should pass.

I think the resolution submitted by my colleague from Oklahoma, Senator NICKLES, and our majority leader, Senator DOLE, and others, is going to set the stage for the passage of tough legislation, providing tough and swift penalties for those people in America that are involved in terrorist activities or those people who are proposing to become involved in any other crime.

I think that it may be that we will look back 10 years from now and say that because of those individuals that died painful deaths out in Oklahoma, maybe that resulted in doing something about crime in America.

I do not think that it is over yet. As we speak today, there are firefighters and rescue workers crawling through the rubbish on their hands and knees, hearing the cracks. When you walk by, as Senator NICKLES and I did, and see the human flesh that is on jagged pieces of iron—my office is located three blocks away, my Senate office in Oklahoma City. Our windows were blasted out. It is very difficult to explain to people the magnitude of that explosion—one that they originally said was a 1,200-pound explosion. They now say it had to be 5,000 pounds. To put that in perspective, in World War II, that was about 10 of the largest nonatomic bombs they used in the war. And this was all perpetrated by one or two deranged minds, who somehow feel people had to be murdered to prove some type of a point.

Lastly, I am going to hope that those individuals—and there are some around—who would try to exploit this tragedy into saying that we were wrong in the elections of 1994 in rebelling against some of the intrusions into our lives by Government, or that somehow this philosophy is tied into this far extreme fringe right wing that appears to be responsible for this tragedy, when in fact the revolution, as I have referred to it, that took place in the ballot box on November 8, 1994, should not be reversed and people should not try to exploit this tragedy in reversing it.

Finally, I want to commend those who have joined me and those whom I have joined in putting together this resolution. I am sure it will pass at noon today. I think that will be the predicate for doing something very meaningful about this type of activity in America.

As we speak, there is a funeral taking place in Oklahoma City. It is for a daughter of a very close, personal friend of DON NICKLES and myself. There will be many more funerals. I

think the Nation will be standing by and watching. I am sure that all the Nation grieves with us. I have been called by people not just from all over the Nation but all over the world. We should take any action necessary to make sure that something like this does not happen again. It has been said many times that if it can happen in the heartland of America, in Oklahoma City, it could happen anywhere. No one is immune.

I yield the floor.

Mr. NICKLES. Mr. President, I compliment my colleague, Senator INHOFE, for his statement and appreciate his assistance in putting this resolution together. It is with a sense of sadness that we have this resolution before the Senate today. We will be voting on it at 12 o'clock. I wish that we were not here. I wish the tragic disaster that happened last Wednesday, April 19, had not happened. The deadliest terrorist attack that ever happened on our soil happened in Oklahoma City at 9 o'clock.

This resolution is cosponsored by Senators INHOFE, DOLE, and DASCHLE, and a total of 75 of our colleagues have cosponsored. My guess is that many more will join in cosponsoring by the time we finish our vote.

This resolution speaks for the Senate but really speaks for America when it says we want to condemn this type of violence. It is a cowardly act, an evil act, one that is responsible for at least 80 deaths that now have been confirmed, with 150 missing and will probably be recovered in the next couple of days. Most of those are expected to be fatalities. In excess of 400 were injured. I visited some of those injured. Some were injured very severely. Some will be significantly injured for the rest of their lives as a result of this cowardly terrorist attack.

Mr. President, it becomes very personal when you see and know the individuals affected. Senator INHOFE mentioned that we have a very good friend who is having a funeral today for his daughter. I talked to another friend today whose wife almost lost her life. She is a very good friend of ours as well. I talked to another friend who actually worked for the Senate, worked for my colleague, Senator BOREN, for several years. His child was almost killed and is still listed in critical condition.

At the memorial service or prayer service on Sunday, I talked to a lot of the victims. I talked to one young couple that lost two children, and that experience makes it all become very personal. I talked to two children who lost their mother.

I talked to an individual who lost a spouse. The stories go on and on. This is a real tragedy of immense proportions with great damage inflicted on those lives.

This resolution expresses our condolences, sympathies and prayers for the families of the victims, to the injured and also for the deceased. We pray for them and we want them to know of our outrage for the crime and our compassion for those individuals as well.

This resolution states our strong support for the President and for the law enforcement officials who are doing everything within their power to apprehend and try and punish those people who are responsible, and it states that we support the President and the Attorney General as they say this is certainly a case in which the death penalty is appropriate. I concur with that.

This resolution also goes a little bit further and says we want to thank the volunteers and the countless people who have put so much into alleviating the pain. Senator INHOFE mentioned some of the firefighters. I remember I was also in Dallas, and I flew up in the first plane available, returning to Oklahoma City, and I was accompanied by three firefighters who donated their time and money. They wanted to be there to help rescue innocent people. We have met countless people, and not just from Oklahoma. We have had firefighters across our State, but we met firefighters from Arizona and from Maryland and from all corners of the country. They are working unbelievable hours, and it is not easy work. I might mention that the work was very difficult at that time and very dangerous. It is not any easier now, because the likelihood of finding survivors is diminishing by the day.

So their task right now is very gruesome, very difficult, and it continues to be dangerous. And our heartfelt thanks—and I am speaking on behalf of all Oklahomans, but really all Americans—for their courageous efforts.

When we see this type of evil deed, it makes people think, how in the world could society degenerate to such a low level, or how could evil be so prevalent to have such an act of violence destroy so many innocent lives.

I might also mention, maybe the light that comes after this evil is to see so much good that has come from so many people, so many thousands of people, all across the State of Oklahoma and all across the country, who are not only condemning the violence but reaching out to help those people who have been injured, to help those families that have been torn apart, to comfort and console.

It has been heartwarming to hear President Clinton's remarks, Reverend Graham's remarks, Governor Keating, Mayor Norick, all of which I will say did an outstanding job not only at the prayer service, ''the time for healing,'' as Mrs. Keating referred to it, but really to reach out to the families and to comfort and console those families and let them know that we really do care.

It is very heartwarming and it made us feel good, and as Reverend Graham said, ''Good will overcome evil.'' We want to thank the volunteers, all the people that worked in the hospitals. I talked to a survivor's family, and he said had it not been for the outstanding work of so many volunteers and the rescue operation, his wife would not have survived, and she is now anticipated to be a healthy survivor.

We want to thank those countless people who risked their lives and were willing to make that kind of sacrifice for other people. It makes me very proud of my State. It makes me very proud of my country. Instead of this being the low mark which devastated not only our city and our State and our Nation, I think it is giving us the chance to rally around and say, yes, good will prevail. There are a lot of good people in this country, and people are reaching out and trying to assist and trying to help. We thank them for that.

Mr. President, I want to address just another item, a development that has happened in the last day or so that I find very troubling in relation to this event. The issue is pointedly noted and cautioned against by columnist George Will, who noted that an attempt to locate the cause of a lunatic's action is ''apt to become a temptation to extract partisan advantage over spilled blood.'' With respect to this tragedy, the contempt for those people who try to gain political advantage from the Oklahoma City bombing will only be exceeded by the contempt for the perpetrators of this crime.

Mr. President, where should our hearts be? What should our goals be? Where should our compassion be? Surely it should be to reach out to those families that are affected, and that has to be our focus, and then to arrest and convict and punish those people who are responsible for this atrocious, cowardly, evil act.

Yet, even before the missing have been recovered, I see politicians and some pundits contemptibly jockeying for position, trying to blame the other side for the evil actions of a few individual criminals.

The bombing in my State was not the work of the left or the right, of conservatives or liberals, Republicans or Democrats, or even right-wing extremists, as some people would say. The Reverend Billy Graham laid the blame on the proper place, noting that the tragic event has proved again that ''Satan is very real, and he has great power.'' He noted that the Bible tells us evil is real and the human heart is capable of limitless evil when it is cut off from God and cut off from moral law. I agree 100 percent.

I am ashamed, I am bothered, even appalled by hearing politicians or pundits who would stoop so low as to play politics with this tragedy.

A reporter on a talk show, Juan Williams, just recently linked the attack to Republicans in Congress saying, ''It's the same kind of idea that has fueled so much of the right-wing triumph over the agenda here in Washington.''

In an attempt to blame Republican leaders in general, columnist Carl Rowan was quoted in the Washington

Post as saying, ''I am absolutely certain the harsher rhetoric of the Gingriches and the Doles * * * creates a climate of violence in America.''

I do not know who the President was talking about yesterday when he said ''loud and angry voices'' spread hate and ''leave the impression that, by their very words, that violence is acceptable.''

Mr. President, this tragedy took the lives of innocent young children and adults alike. Surely in the effort to lay blame, our focus must rest with the criminals—the evil, cowardly, individuals who took the lives of so many innocent people. Surely, the focus of our hearts and our passion and our prayers must remain with the families that have been devastated.

I just hope and pray that those people who may be tempted to extract partisan advantage from this unbelievable act will look inwardly and find compassion in their hearts and not resort to playing politics with the lost lives of my fellow Oklahomans.

If you were there—Senator INHOFE and I were there, Governor Keating and others—and walked around in the ruins, and talked to the firemen and talked to the rescue people who were struggling to find additional survivors, the very idea that someone might be playing politics with this is almost beyond comprehension. It is offensive. I hope we do not hear it again.

Let us find those people responsible and punish them and show compassion for the families. Those families have had their lives ruined. They lost loved ones. They lost a child, a daughter, a spouse. They lost a father or a mother. Their lives in many cases have been more than devastated by a tragedy from which they may not be able to recover. If it were not for the grace and comfort of God, they may not be able to recover.

This Senate, by our resolution today, I think, will be expressing comfort and consolation to those families, our outrage at this unbelievable, unspeakable crime, and our sense that we in Congress want the law enforcement people to apprehend them and to punish them.

We compliment the law enforcement people for the outstanding job that they have done. We compliment the rescue efforts that are going on today and will probably be going on for some days ahead. We compliment our political leaders from President Clinton, Governor Keating, and the city officials, Mayor Norick, and many others who have put in so many tireless efforts, including fire officials and others.

We want them to know we support them and we appreciate their efforts. We appreciate the sacrifices they made to show that good can overcome evil. I think we have seen that in my State. I am very proud of the State of Oklahoma and our country as a result. I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may consume such time as I may require.

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

TRIBUTE TO SENATOR JOHN STENNIS

Mr. BYRD. Mr. President once again, the silver cord has been loosened and the golden bowl has been broken: ''Then shall the dust return to the earth as it was: and the spirit shall return unto God who gave it.'' These words from Ecclesiastes—spoken probably ten centuries before the birth of Christ—bare the indelible stamp of permanency. Somewhere, every day, every hour, every minute, they are brought home to someone, and in their train, follow the inevitable pain and sorrow and tears, that we all must bear when loved ones and friends depart from us in this earthly life. The angel of death is no respecter of persons, and each of us will one day hear the beating of his wings—

Leaves have their time to fall,
And flowers to wither at the north wind's breath,
And stars to set—but all,
Thou hast all seasons for thine own, O Death!

Mr. President, it was with sorrow that I heard the sad news over the past weekend that our former colleague and friend, John Cornelius Stennis, had passed away at the age of 93. When I came to the United States Senate in January 1959, John Stennis was a Member of this body, and we served together 30 years—until he retired at the close of the 100th Congress in 1989. So, it is with sadness that I pay tribute to the memory of this departed colleague today. As we grow older, we are obliged to bid farewell to some friend almost every day, and thus does the circle gradually, and all too rapidly, diminish; for—

There is no union here of hearts
That finds not here an end.

Mr. President, John Stennis was a man who achieved greatly in life. For 41 years and 2 months, he represented a great and patriotic constituency in this Chamber, where some of the greatest men of the Republic have served and aspired to serve, and that achievement alone would mark him as a man among men. When we add to this the fact that he served as a member of the Mississippi State House of Representatives for 4 years, as district prosecuting attorney from 1932 to 1937, and as a circuit judge from 1937 to 1947, we begin to realize what a wonderful career we are remembering today—60 years in the public service—in elective positions, where neighbors and friends, who are often more critical than strangers, are the electors! What more could be said by way of eulogy? Volumes could be written and less said. Yet, that is the record of our former colleague and friend, who, in the merciful dispensations of an all-wise Providence, has now passed on to the other side.

John Cornelius Stennis was born near DeKalb, Kemper County, Mississippi, on August 3, 1901. He attended the county schools; graduated from the Mississippi State College in 1923, and graduated from the University of Virginia Law School in 1928. He was admitted to the bar in 1928 and commenced practice in his home town of DeKalb. I had the honor of serving on the Arms Services Committee and on the Appropriations Committee with Senator Stennis, of both of which committees he had served as chairman before his voluntary retirement at the close of the 100th Congress.

John Stennis was an honest man, and he was a good man, as good men go in this life—plain and modest. He was amiable, courteous, and courtly—a southern Christian gentleman, in every sense of the word. He was intellectually honest, a man of great moral rectitude, simple in his habits, and completely devoid of hypocrisy. He was a Senator who loved the Senate and who was dedicated to its traditions. He was conscious at all times, of the great trust confided in him by the people he represented, and he carried in his heart a great reverence for this institution and for the Constitution of our country. His was a steady hand, an upright character. He was a man of justice and fairness to all. He was unassuming in his manner, sincere and firm in his convictions. Devoid of envy, he was ambitious only to serve the cause of justice and humanity, and being of, for, and from the people, he gave his life to their service. In him, the great people of Mississippi had an ever faithful friend and servant.

Mr. President, John Stennis was not a large man physically. He was actually rather slight. But he was a giant. The breadth of his character was huge, and the steel of his courage was formidable. Nothing defeated him—not the bruises of the legislative battlefield; not the frightful attack by thugs in the street, who almost caused his death, near his home; not the death of his beloved wife; not the loss of his leg to cancer.

Nothing defeated him. Nothing held him down for long. He always got up again and went on. He struggled, but he prevailed and endured. And he did it all with a quiet, unassuming dignity.

He was courtly—ever the gentleman. I called him a Senator's Senator. He represented everything fine about the Senate and everything fine about the human spirit. He was the cream of all things decent that one looks for in a leader and in a man.

Had he lived in another age he would have been just as great, as respected, as beloved, and as revered as he has been in his own time. He would have enhanced any company in any situation in any age.

But most of all, the indomitable fortitude stands out. There is a courage

possessed by some men which is extraordinary—far beyond what most individuals can ever muster in even their best and bravest moments. It is rarely accompanied by bombast and breast beating. It is carried with a quiet and calm demeanor. No outward show is necessary. In his case, the kindly visage gave no clue to the inner steel. He bore his duties and his crises, his joys and his sorrows, with equal dignity.

But it was awesome actually to watch. How many times have I come to this Chamber for a vote, bone-weary, and at some dreadful hour in the morning, and seen him sitting straight as an arrow at his desk! There he would be, 17 years my senior, frail, missing one leg, with a pleasant greeting for all, in spite of the hour. In this age of clock-watching, and quality-of-life advocation, that kind of dedication may seem an anachronism. But John Stennis was dedication and duty epitomized in the human flesh. He showed us by his example. He never lectured, never said, ''Do as I do.'' He just lived an exemplary life, and that was enough to teach all who were fortunate enough to be around to learn. He taught us how to be Senators, he taught us how to bear sadness and brutality without bitterness or surrender or despair. He did so by just being what he was.

Mr. President, all that even the greatest of scientists can do is to try to interpret and apply the laws, the immutable laws, the eternal laws of God. Scientists cannot create matter and they cannot create life. They can mold and develop and shape and use them, but they cannot call them into being. They are compelled to admit the truth of the old nursery rhyme, which I am sure the Presiding Officer and the other distinguished Senator from Oklahoma will remember along with me:

Nor you, nor I, nor nobody knows,
how oats, peas, beans, and barley grows.

But the Scriptures tell us of the laws of God, and reveal to us the Source from whence this Earth, the universe, and all of us who dwell here—for a split second, as it were—between two eternities: ''In the beginning, God created the heaven and the earth.'' The Scriptures also reveal to us that God created man from the dust of the ground, and ''breathed into his nostrils the breath of life, and man became a living soul.'' God then gave Adam a helpmate, Eve, and from those ancient parents, we have all descended, and from them, we have all inherited death. Only a Milton could so incisively provide a fitting epilogue to man's fall from grace.

They, looking back,
all the eastern side beheld of Paradise,
so late their happy seat,
waved over by that flaming brand; the gate
with dreadful faces thronged and fiery arms.
Some natural tears they dropped,
but wiped them soon;
the world was all before them where to choose
their place of rest, and Providence their guide.
They, hand in hand, with wondering steps and slow,
through Eden took their solitary way.

As so, it is our inevitable lot to die. But the Scriptures also tell us that we may live again in that long lost paradise from whence our parents came. There was a man in the land of Uz, whose name appears in extra-Biblical texts as early as 2000 years before Christ. His name was Job, and from his patient, suffering lips came the age-old question, ''If a man die, shall he live again?'', and later from his lips came the answer to his own question: ''Oh, that my words were written and engraved with an iron pen upon a ledge of rock forever, for I know that my Redeemer liveth and some day He shall stand upon the earth; and though after my skin worms destroy this Body, yet, in my flesh shall I see God; whom I shall see for myself, and mine eyes shall behold, and not another.''

Mr. President, many years ago I read a story of an old Anglo-Saxon king who had his barons at a great banquet. They were eating their venison and quaffing their ale. It was a bitter night outside. The storm raged. The snow was falling thick and fast. Suddenly, into the rude chamber in which they were gathered, there flew through some crack or crevice in the roof a little bird. Blinded by the light and perplexed, it flew wildly here and there and beat itself against the rude beams. Finally, it found another crevice and out it went again into the night. The king, advanced in years, spoke to his barons and said,

That bird is like a life;
it comes from out of the night.
It flits and flies around a little while,
blinded by the light,
and then it goes back out into the night again.

Mr. President, as we witness the passing of a great and good man like John Stennis, we may well take appraisal of our own public and private merits and remember that we, too, only flit about for a little while, our voices resound in this Chamber for a few days or months or years, and then we are gone. These things are evanescent. Real substantial qualities of honesty, integrity, gentleness, modesty, and generosity will make the life of John Stennis remembered when much of what we say and do here in this Chamber shall have passed away and perished. John Stennis is gone,

. . . with your skysail set
For ports beyond the margin of the stars . . .

And those of us who had the honor and privilege of serving with him may say of him:

His life was gentle,
and the elements so mixed in him
that Nature might stand up and say to all the world,
''This was a man.''

To the family and friends of John Cornelius Stennis, my wife Erma and I extend our deepest sympathy.

I saw the sun sink in the golden west,
No angry cloud obscured its latest ray.
Around the couch on which it sank to rest
Shone all the splendor of a summer day.
And long, though lost to view, that radiant light,
Reflected from the sky, delayed the night.
Thus, when a good man's life comes to a close,
No doubts arise to cloud his soul with gloom.
But faith triumphant on each feature glows,
And benedictions fill the sacred room.
And long do men his virtues wide proclaim,
While generations rise to bless his name.

Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to compliment my friend and colleague, Senator BYRD, for the tribute to our colleague, Senator Stennis, who served in this body so ably, so well, for so long. His service of 41 years—only the Senator from West Virginia would know who has exceeded that besides Senator Hayden, I guess—but he had a remarkable tenure in the Senate.

I had the pleasure of serving with Senator Stennis. He was a person that had enormous credibility and reputation prior to my coming to the Senate going back for many years. He was even referred to in the Senate as a person known as the ethical watch guard of the Senate, and certainly a Southern gentleman in every single way. He was a real asset to this body, certainly to the State of Mississippi and to our country, as well. We shall all miss him, but not forget the contributions that he made to his State and country.

I compliment my colleague from West Virginia for a beautiful tribute to a wonderful colleague and Senator.

Mr. BYRD. Mr. President, I thank my friend.

Mr. PELL. Mr. President, today the Senate formally adds its voice of condemnation and outrage of the mindless and heartless massacre carried out in Oklahoma City last week. I join my colleagues in stating in absolute and unequivocable terms that such acts will never be tolerated in this country and that we resolve to do all in our power to make sure that the perpetrators of this heinous crime are found and brought to justice. In our society, the rule of law reigns over the rule of terror and it follows that swift and assured retribution must await those who harbor the thought that such acts can somehow alter that equation. The victims deserve no less; the criminals can expect no more.

As this tragic event causes us to pause and reflect upon a myriad of questions as to how and why such an event could occur, I urge us all to exercise the temperance and reason which are the characteristics of a civilized society. This most uncivil and unhuman of acts cannot be explained simply or logically by rational thought. In the rush to pinpoint blame and cause, already occurring it seems in the public discourse about this incident, too often we overstep the mark and compound the harm already suffered. For the moment, let us attend to the most immediate tasks at hand, that of the continued efforts to search for survivors, to

care for the wounded, to comfort the families and friends who have lost loved ones, and to apprehend and punish those responsible. That is more than enough for now and it will keep us busy for days to come. Then we will have the time for reflection on the broader, though not any less important, questions as to what we may be able to do to thwart such acts in the future.

My heart goes out to those families and friends grievously affected by this unthinkable tragedy. The losses they have suffered are immeasurable and I join the entire country in expressing the consolation and sympathy. I also salute the heroic efforts being made to deal with this event and in particular commend the Oklahoma City Police, Fire, and Emergency Medical Departments, President Clinton, Attorney General Reno, the Justice Department, the FBI, FEMA, and all others for their excellent work in dealing with this incident. I pledge whatever assistance I may be able to give and will work to do what I can to diminish the chances of such an event from occurring in the future.

Mr. MCCAIN. Mr. President, I rise to support Senate Resolution 110 and join with my colleagues in denouncing the violent attack on Federal workers and their children last week in Oklahoma City.

Our world is full of daily tragedies, so much so, that each of us runs the risk of growing numb to the pain. But this violence struck close to home in many ways. Those murdered by the cowardly terrorists who planned and carried out this bombing appeared to be targeted because they worked for the U.S. Government, or were the children of these workers. I urge the administration to employ the strongest efforts under law and our Constitution to bring the killers to justice.

These killings also struck home in another way for me. In my current role as chairman, and previously as vice chairman of the Committee on Indian Affairs in the Senate, I have seen firsthand the squalid housing conditions that plague many Indian and native American communities. I have also noted the many fine efforts of dedicated Federal employees who try to counteract these conditions with funds and authorities that are all-too-often inadequate to address the overwhelming need.

Among those killed in this bombing were a number of Federal employees who have dedicated their lives to improving Indian and Alaska native housing conditions. Killed in the blast, or still missing or unaccounted for as of yesterday, are 10 individuals who have played very prominent roles in supporting the development of housing opportunities in Indian communities. While I do not give up hope that those missing or unaccounted for will still be located alive, I do wish to take this opportunity to describe what I know about 10 of these employees.

These 10 people have worked for the Office of Native American Programs [ONAP] within the U.S. Department of Housing and Urban Development [HUD], or for the HUD Area Counsel's Office on Indian housing issues. Under Secretary Cisneros' leadership, HUD recently had announced a substantial streamlining of its administrative structures so that it could dramatically bolster its efforts to improve housing conditions in Indian communities. These employees were part of the new thinking underway at HUD, and I, and many tribal leaders, will sorely miss each one of these HUD workers and their dedicated efforts.

Most Americans would be shocked if they saw the housing conditions that Indian and Alaska Native families must endure day in and day out. Approximately 90,000 Indian families are homeless or underhoused. One out of every five Indian homes lacks complete plumbing facilities. According to 1990 census figures, 18 percent of all American Indian households on reservations are ''severely crowded.'' The comparable figure for non-Indians is 2 percent. Likewise, while 33 percent of all reservation households are considered crowded, the comparable figure for all households nationally is 5 percent. The typical Indian home on a reservation has 4.4 rooms, nearly a whole room less than the national median of 5.3 rooms.

These are the conditions that the 10 Oklahoma HUD workers who are confirmed dead or missing sought to improve. I am outraged that their constructive efforts are cut short by the destructive acts of cowardly terrorists.

HUD officials have informed me that ONAP maintained a staff of 26 in Oklahoma City. Another 10 Oklahoma City HUD employees, including the Office of Area Counsel, provided support to the native American programs. I know from the reports of Indian tribes in Oklahoma, Kansas, Louisiana, and Texas that ONAP staff had developed a very cooperative and productive relationship with the native American communities there. I am told that the Oklahoma HUD staff have been exemplary in their professional respect for the rich cultural traditions of their counterparts among tribal Government staff. It was not unusual to see ONAP staff at pow-wows and other native American events on the weekends, joining with those they served in celebration of the beauty and enduring cultures of these communities.

The bombing exacted an extremely heavy toll on ONAP personnel. As of yesterday, two staff members were confirmed as casualties, George Howard and Lanny Scroggins. Three additional staff members were still unaccounted for—Jules Valdez, Don Burns, and Dave Burkett. From the Area Counsel's Office, Clarence Wilson, Mike Weaver, Kim Clark, and Lee Sells remain unaccounted for. Susan Ferrell, the lead attorney for native American programs and one of HUD's top Indian law attorneys, has been confirmed as a casualty.

Mr. President, these staff were some of HUD's best. They were dedicated, loyal, hardworking, and personally committed to the goal of providing decent, safe, and sanitary housing and community development for this Nation's native American communities. Their contributions over the years have been extremely important to HUD's vital work in Indian country. Their loss at the hand of these senseless killers means the tribes and Indian families they served in that region will pay a high personal cost. Equally high will be the price paid by the dedicated colleagues left behind in HUD's ONAP and Area Counsel's Office. Many of these survivors carry physical injuries from the blast, some quite serious. All of them carry emotional scars that understandably run quite deep. I hope these survivors can find courage for these days.

The bombing was the act of cowards. I condemn it in the strongest of possible terms. I mourn the loss it has caused to the family members of its victims, to its survivors who now must live with this great pain, and to HUD's Indian offices and the Indian tribes who must now piece back together a program that has always struggled against nearly insurmountable odds.

Mr. FEINGOLD. Mr. President, like every Member of this body and millions of people around the globe, I deplore in the strongest possible terms the senseless murders of the innocent children and adults in Oklahoma City. This was an atrocity and a barbaric act against humanity that truly shocks the conscience. I have joined in voting for the resolution presented by the majority leader and the minority leader because I wholeheartedly agree with virtually every statement made in the resolution.

Congress must condemn, in the strongest possible terms, the heinous bombing attack against innocent children and adults.

Congress should sent its heartfelt condolences to the families, friends, and loved ones of those whose lives were taken away and injured by this abhorrent and cowardly act; and express its hopes for the rapid and complete recovery of those wounded in the bombing.

Congress should commend the rapid actions taken by the President to provide assistance to the victims and apprehend the perpetrators of this horrible crime. I also believe that we should be sure that Federal laws aimed at combating acts of terrorism are comprehensive and effective in preventing and punishing these acts.

At the same time, I must express one reservation concerning one provision of the resolution that indicates cogresssional support for the President and the Attorney General's position that Federal prosecutors will seek the maximum penalty authorized by law, including the death penalty, for those responsible. I am opposed to the death penalty, but I recognize that current

federal law provides for the death penalty in cases such as Oklahoma City.

I understand the feelings which lead people to call out for imposition of the death penalty in heinous cases, such as this. However, I do not believe that it is generally the Senate's role to make a statement on what specific type of penalty the prosecutors should seek in any particular case, whether it be the death penalty of life imprisonment or whatever. Congress should not endeavor to step across the line which separates the judicial functions of the United States to attempt to direct prosecutors in the discharge of their functions. The law currently provides for the death penalty in this case and regardless of whether I support or oppose these provisions in existing law, it is for the Federal prosecutors, not Congress, to determine what penalty should be sought and ultimately, it is for a jury of Americans to make the final judgment as to guilt and punishment for those who are brought to trial in this case.

Ms. MIKULSKI. Mr. President, I rise today to ask my colleagues to continue mourning the brave and innocent men, women, and children who lost their lives this past Wednesday in Oklahoma City.

As I speak, I know that search and rescue workers continue to dig toward the bottom of the Alfred Murrah Federal Building where the bodies of more Federal workers lay. These public servants paid the ultimate price in the service of their country.

Mr. President, most of the victims of this tragedy were men and women of our Federal Government. These people put their lives on the line just by being associated with the U.S. Government. These were common, decent human beings that were trying to make their Government work better. I urge my colleagues to always remember the countless, nameless Federal workers who work long, hard hours, committed to making our system of government work for the better who put their lives on the line for the U.S. Government.

It was also an American community—working women and men with families providing for their children, who were affected by this horrible tragedy. The past week, this American community has come together as a shining example of why America is so strong. Local police and firefighters, Federal law enforcement agents of the FBI, ATF, Secret Service, and Federal Emergency Management Agency personnel show us what Americans want from their public servants: efficiency, competence, cooperation. Americans rallying to overcome a crisis that threatens their stability. This is the American spirit.

I urge my colleagues to keep the victims and their families in your thoughts and honor them with your prayers. Thank you, Mr. President, and I yield the floor.

Mr. FORD. Mr. President, I rise today to join my colleagues in expressing our outrage at the senseless, brutal murders and injuries sustained by defenseless citizens and children in Oklahoma City last week.

We all know that Oklahoma City, and indeed our Nation, will never be the same again. We all know that we will never have all the answers as to why something this tragic can happen. But one thing we can know is that we will not rest until the perpetrators of this heinous act are brought to justice.

The resolution we will approve overwhelmingly today is just the first step Congress will take in attempting to address this tragedy. We will work with the administration to pass legislation expanding the FBI's powers to combat such acts of terrorism. We will work to do all we can to see that no one has to go through this experience again.

Mr. President, there are not words to express the sorrow we feel for the families who have lost loved ones. No one can prepare themselves for a tragedy of this magnitude. No one can prepare themselves to see innocent infants robbed of their futures. And no one can prepare themselves for the grief and loss we know those personally affected by this tragedy will experience for the rest of their lives.

One thing we can do is reach out to them, offer our prayers, our comfort and support. As the President recently said, ''you have lost so much, but you have not lost everything. And you certainly have not lost America, for we will stand with you for as many tomorrows as it takes.''

In closing, Mr. President, I want to personally express my sincere thanks and appreciation for the tireless efforts of this administration, the Oklahoma officials, the rescuers, investigators, police officers, and firemen, our clergy, and so many thousands of others who have given of themselves in this tragedy. They are all heroes and their work will never be forgotten, just as we as a nation will never forget April 19, 1995.

MILITIA GROUPS AND THE OKLAHOMA CITY BOMBING

Mr. BAUCUS. Mr. President, 2 weeks from today, we mark the 50th anniversary of the Nazi surrender in World War II. And just a week ago, we witnessed an event that should remind us all of just what we were fighting.

I am speaking, of course, of the bombing in Oklahoma City. Our sympathy and solidarity go out to the victims of this terrible crime and their families. And we learn that 50 years after the war, the battle against hate is not over.

We Montanans like to call our State the ''last, best place.'' We take pride in our low crime rate and our civil society. And we like to think we are immune to the crime and violence that so sadly affects our country.

But we are not immune. Our easy-going ways now seem to attract some of the worst elements in our country. We find that anti-Semites, right-wing extremists, and terrorists believe they can find a home in our State.

THE MILITIA AND THE FREEMEN

In the aftermath of the Oklahoma City bombing, you may have heard about the so-called Militia of Montana. Let me tell you something about this group and its friends.

The Militia of Montana was founded by a few people associated with the neo-Nazi Aryan Nations group. Their literature and videos talk about international conspiracies, shadow governments, and banking elites—code words that anyone familiar with the history of anti-Semitism recognizes immediately.

Associated with the militia leaders is the even more extreme Freemen movement. This group says in public that the income tax is illegal and the Federal Government is a conspiracy. In private, it says people who are not white are beasts; the Bible was written for the white race.

With these organizations come hate, lawlessness, and terror.

The Federal Government and Federal officials are targets. Jews are targets. We had a swastika painted on a house in Big Timber last month. A Jewish child taunted in Helena. Militia members have gone so far as to distribute hate literature—Nazi-style pamphlets called ''Strength of a Hero'' and ''Warrior Song''—in the Montana Legislature.

Women are targets. In the past year, fanatical opponents of abortion rights bombed a clinic in Kalispell and burned the Blue Mountain Women's Clinic in Missoula to the ground.

And law enforcement is a target. Just a few weeks ago, seven armed militia members threatened the marshal in the small town of Darby with guns after he had pulled over one of them for driving in a car whose license plates expired 3 years ago. On the other side of the State, Freemen have posted bounties for law enforcement officials, saying they were to be executed by hanging.

Thoughtless politicians and radio broadcasters encourage this by loose talk of revolution, and intemperate attacks on Federal bureaucrats—which is to say, our neighbors who work for USDA, the Forest Service, and law enforcement. Some have even brought militia proposals before the Montana Legislature.

The results of this toleration for hate are obvious. In March, an eastern Montana county attorney wrote me to say:

> The more the federal and local law enforcement agencies behave with a ''hands-off'' attitude, the more bold and daring these groups become.

And a constituent from Ravalli County writes, just 9 days before the bombing:

> You see Freemen with guns in the post office, grocery store and gas stations. If it gets to any one of them that a person doesn't like the ''Freemen,'' they will call or confront a person face to face. They tell people that we are all going to ''die like the Jews.''

NO PLACE FOR HATE

The situation is serious. But if we face up to it, we can solve it before it gets worse.

The ringleaders of the hate groups are few in number. Garfield County Attorney Nick Murnion has studied them closely. He believes the Freemen and militia have no more than 25 to 30 core members around the State.

The hard-core leaders, in many cases, are common criminals. They refuse to pay their taxes and will not live by the laws. Those who have broken the laws should be arrested, tried and put in jail. And we can do it if we give law enforcement the support it requires.

But dealing with the rank and file is a responsibility of the entire community. Most militia members are not Nazis or potential terrorists—merely loud, deluded people who are an embarrassment but not a threat. And all of us need to show them that hate has no place under Montana's big sky, and no place in America.

Hate groups, threats of violence and racism must be met in the open. They grow and spread in darkness and silence but they vanish in the sunlight. The entire American family must show them that they are not welcome.

THE BILLINGS MENORAH MOVEMENT

And that will work. I know, because I have seen it work. When the vast majority of ordinary, decent people stand together, the small number of haters and extremists are always defeated.

In November 1993, a group of skinheads came to a Jewish house in Billings, MT, and threw a bottle through the glass door. A few days later they put a brick through the window of another Jewish house, with a 5-year-old boy in the room. Then they smashed the windows of Catholic High School, which had a ''Happy Hanukah'' sign on its marquee.

Events like these can isolate their victims. They can silence people of good will and open broader campaigns of hate and violence. But that did not happen. Instead, Billings rallied with the Jewish community.

The Billings Gazette printed up thousands of paper menorahs. People all over town pasted them in their windows as a sign of solidarity. Billings held the largest Martin Luther King Day march ever in our State. And the skinheads left town.

As good people again speak out, that will happen with the militias and Freemen too. They must know they are not welcome in our churches, our grocery stores, our towns. We must stand with law enforcement as they track down clinic bombers and arrest radical tax protesters. And when the American family stands together against the hate groups, as Billings stood against the skinheads, they will vanish.

Mr. President, nothing will undo the pain in Oklahoma City. But the suffering of the bombing victims and their families need not be in vain.

Let us reflect on this horrible event.

Let us remember the sacrifice our fathers made across the seas 50 years ago.

And let us rededicate ourselves to ending hate here at home in America.

THE ENVIRONMENT OF EXTREMISM

Mr. HOLLINGS. Mr. President, on the matter of the extremism which the distinguished Senator from Montana so thoughtfully addressed, I want to just address the environment; not necessarily the extremists, not the hate groups—I want to address our conduct, namely the public servants.

We read in the morning's paper, for example, where David Broder uses that description of this Government here in Washington, the greatest gift to free people the world around, a representative form of government that works so well—he uses the words of our distinguished Speaker, ''the corrupt liberal welfare state.''

You know Mr. GINGRICH is not going to blow up any buildings and neither is Senator HOLLINGS. But what has come from my experience is a reaction against this particular environment, because it is created by pollster politics.

I ran for 20 years without ever seeing a political poll. You addressed the issues as concern the citizenry, going down the Main Street, out into the farms, the rural areas, the small towns, as well as the civic club meetings in the cities. You had a feel for what is going on. But that is not allowed today in the pollster world. What you do is you take a poll, find out what they call the six or seven hot button issues, and take the popular side of those particular issues and blame everybody else.

Specifically, if you want to run for office up here in Washington, it has gotten to an environment of running against the Government. This is sheer nonsense, but this is the fact. I think we are elected to make this Government work. The approach of the environment, under the contract and otherwise, is to get rid of the Government, dismantle it. It is not needed. Cut the money so they cannot do the job or whatever else it is. But as long as you can run against the Government, with the cry, ''The Government is not the solution, the Government is the problem,'' that is the problem I wish to address here. Because all the attention and editorials will now go with respect to the hate groups.

Unfortunately, they have prospered over the past 15 years. I was inaugurated as Governor of South Carolina in 1959. After I took the oath of office, I ran back up the steps to get on different clothes for the parade. I looked on my desk and I found a green envelope, gold embossed, from the Ku Klux Klan, Grand Klavern of America, giving me a lifetime membership. Well, I was lawyer enough. I said, ''We are going to return that with a return receipt requested.'' But I asked for the head of my law enforcement division, Mr. Pete Strom, I said, ''Have him here at the end of the parade. I want to see about this.''

At the end of the parade, I asked Chief Strom. I said, ''We have the Klan in South Carolina?'' I was down in Charleston, and we did not have that activity in the city of Charleston, not that we were any better than any part of the State.

But he says, ''Yes. We got 16,721 members.''

I said, ''You keep a count?''

He said, ''Yes. We keep a count of them but none of the Governors wanted to do anything.''

I said, ''Do anything?''

He said, ''Yes. Get rid of the crowd.''

I said, ''Well, I agree with you. We ought to get rid of them. What do you need?''

He said, ''I need your cooperation. If you can get me a little money for informant fees, if you can help me infiltrate this group, we will get rid of them.''

And at the end of my 4-year term we integrated now Clemson University—then Clemson College—without incident, because we were able to bring it down from 16,721 to less than probably 200.

In fact, they told me. I did not know about any meetings. But some of my informants were called in the meetings and informing and everything else, and we dispelled the Klan from South Carolina. But unfortunately, Mr. President, that now has grown back.

When they talk, and write in erudite fashion in the morning news, do not worry about this violence and racism, that we had it back in the 1920's. Do not give me the 1920's. Let us go back just 30 years ago or 40 years ago, from 1954 with the Brown against the Board of Education decision and come on up 40 years to 1994. I can tell you categorically we have more racism today in my home State than we had at that particular time.

This environment really bothers me in the context of what I experienced back home just this past Easter break. We had an annual meeting of our State Chamber of Commerce. To that meeting I was invited, of course, the two Senators, and the six Congressmen. Most of us, of course, were in attendance and we answered the questions. One of our distinguished Congressman had gotten on to the matter of the abolition of, getting rid of, closing down the departments of Government. I was just sort of taken aghast. But I thought I would hit them right head on.

When my turn came, I said, ''Wait a minute. You folks are talking now of abolishing the Department of Commerce?'' Here I am meeting with the State Chamber of Commerce, and I could see the faces light up, and they started almost clapping saying, yes. I said, ''The Department of Commerce, Education?'' We had former Governor,

very popular and outstanding Governor, Dick Riley, who is the Secretary of Education up here now. They said, yes, yes. They got even louder. I said, ''Energy, and HUD?'' Yes. They were almost standing up cheering. They were almost standing up cheering.

Let us do not talk of the extreme. That is easy to address. Let us talk of the responsibility of middle America. Everybody wants to buy the vote around here of middle America. We are it. We are middle America and we are developing that attitude of dismantling it and getting rid of the very thing we are supposed to build and represent to respond to. We certainly are not responding by paying for any bills.

I fought that, now years on end, trying to get fiscal responsibility. But I want to emphasize that my feeling is not just on account of the disaster in Oklahoma, which I think is reflective. When we set up the environment of that kind, then extremism can prosper. I saw it in 1963 under our hero John Fitzgerald Kennedy. I will never forget at that particular time the anti-Kennedy environment that persisted. I have never thought anyone was more eloquent, more intelligent, more dynamic than John Fitzgerald Kennedy. And he did attract in a sense the best and the brightest to our Government at $1 a year and we had things moving.

But an environment had developed somewhat similar to this environment today that I feel when I go to these meetings and see these reactions—President Kennedy was about as popular as an itch. I can tell you here and now when the news came over that he had been assassinated, public schoolchildren in my backyard stood and clapped.

We are responsible—not the extreme groups—we in Government are responsible for these responses, with this kind of environment, and this kind of feel amongst the people. Yes. The talk show hosts. Good heavens above. They cannot plead not guilty now. They are as guilty as get out. They have talked of arms and shooting. And, yes, this morning as they talk now they refer to ourselves up here as the corrupt liberal welfare state. They have got all the buzzwords. The Republican Party gives instructions on using the proper buzzwords. The Senator from North Dakota put that in the Congressional RECORD. We know those particular buzzwords, and they will tell you to use those buzzwords because that fires up the people and engenders support for your particular position. That is what has been going on, to my dismay.

I felt after the election in November that rather than a Contract With America, that what we needed was a challenge. Rather than reinventing Government, we needed to restart it. After all, we had 12 years of Reagan-Bush, and Heaven knows they had cut enough spending, except in the field, of course, of defense. We had cut, cut, cut—this minute with even further cuts, 50 percent of WIC, 50 percent of Head Start, 50 percent of title I for the disadvantaged. All of those have been not embellished and fleshed out to their fulfillment whereby we save money—$3 for every $1 invested in WIC, $4.50 for every $1 invested in Head Start, $6.50 for every $1 invested in title I for the disadvantaged. Yes, health research has been cut. We saved $13.50 for every $1 we invest there.

Some were talking about the flu. I just was reading David McCullough's book on Truman, and after World War I; 1918, 1919. We had 500,000 deaths from a flu epidemic, more than was killed in World War I. We had 25,000 GI's in camp that never got to war that died as a result of the flu. With problematic research, we have saved those lives, and the report now is we have less than 5,000 here in the year 1994, or 1995, the most recent figures.

So we save and we ought to understand by investing in education, investing in these various programs, we actually are saving money. But the drumbeat to election has gotten so that there is a total disrespect for anybody that serves in public office almost today, and particularly at the Washington level.

I thought with the problems that we had what needed to be done is a challenge for America in the context of a Marshall plan on the one hand, and a competitive trade policy on the other hand. Specifically, as we started the year, we have 39.9 million in poverty in the United States of America, and that has not diminished. We have over 10 million homeless on the sidewalks tonight when you are on the way home. We have 12 million children going hungry. We have 39 million without health care. Those who have a full-time job are making 20 percent less than what they were making 20 years ago. According to the census figures last year, that is the groups from 17 to 24—73 percent of that age group cannot find a job or they cannot find a job out of poverty. And with our lack of a trade policy whereby 10 percent of manufactured goods, back in 1970, 25 years ago, only 10 percent of manufactured goods consumed in your and my United States represented imports; now over 50 percent. If we had gone back in the last few minutes or as of today back to the 10 percent, that is 10 million manufacturing jobs. We are going out of business. We are headed the way of England. As they told the Brits some years back, ''Don't worry; instead of a nation of brawn, we are going to be a nation of brains, and instead of producing products, we are going to provide services and have a service economy. Instead of creating wealth, we are going to handle it and be a financing center.'' And England has gone to hell in an economic handbasket.

When you lose your economic power, Mr. President, you lose your power in foreign relations. As of today, we are not the biggest contributor to foreign aid. Japan is the biggest contributor. They are holding the schools on Fredrich List, the Japanese model, whereby the wealth of the economy is measured not by what it can buy but by what it can produce and the decision is not based on be fair, be fair, level-the-field nonsense. It is whether the decision strengthens or weakens the economy. And this is the competition we have in the Pacific rim, and even now the emerging nations in Eastern Europe are not adopting the free trade of Adam Smith and David Ricardo but, rather, following the Fredrich List model, and that is the competition we have to wake up to.

So I thought the first order of business now with the fall of the Wall was that we could start rebuilding this land and we are immediately going to the distinguished President George Bush, who, in his State of the Union, said we have got more will than wallet. False. We have got more wallet than will. I can tell you that. We have the money. We are spending it $1 billion a day for interest costs, for nothing. We are wasting it. If they want to get a Grace Commission—and I was very sorry to see my friend passing here, Peter Grace, who headed up that Commission, just this last week. I served on that Commission, and he acted with tremendous distinction for the good of the Government here in Washington.

But if you want to get waste, fraud and abuse, the biggest we have—and nobody wants to talk about it—is the increase of the debt. And all you need to do, if you want to find out what the real deficit is, is see what the debt was in 1994, what it is going to be in 1995—we will go backward—and what it was in, say, 1990 and how much it increased in 1991, and then in 1991, how it increased in 1992. And you can see, not of this structural debt or other kind of debt that they describe, but you can see we are spending on an average of $300 billion more than we are taking in. That is the deficit as I see it.

In January, they estimated $338 billion, but we have had six increases in the interest rate since that time. So it is going to be $350-some billion no doubt—$1 billion a day—and we are into a downward spiral. You can have all the freezes, and I favor them. You can have all the spending cuts, and I favor them. I absolutely oppose any tax cut. We do not have the money to cut. I can tell you that now. But that is buying the vote, the pollster will tell you, not only to use the pejorative terms but to come out for middle America.

That is what distresses me. The leadership of the Republicans and the leadership of the Democrats are both talking about middle-class bills of rights and buying that vote and leaving us who have been in Government and trying to work to get us operating in the black and get this Government going again scrambling back to the environment. We can put in a value added tax along with spending freezes, along with spending cuts, along with closure of

the loopholes, tax expenditures and along with a tax increase.

I knew in my heart—and I can see Howard Baker there, the leader back in 1981, 1982 when we talked about a freeze. In 1981, Howard turned to me and he said, ''Now, Fritz, I can't come out and endorse it, but we are going to have to get on top of this. We are going up to the hundred billion deficit.''

We never had had that before. We do not even blink at the $300 and $400 billion deficits that we are having today. He said, ''You come out with your freeze, and I will support it in the context of I will say, 'Well, that is interesting; let's study it and let's see if we can go from there.''' And when I did, the next morning Don Regan, the Secretary of Treasury, tackled us from behind and said, ''No way; we are not going to do that.'' And as a result the rest is history.

Under President Reagan, we got the $100 billion deficit, the first $200 billion deficit. Under President Bush, we got the first $300 billion deficit and the first $400 billion deficit. Now, yes, President Clinton came to town and cut $500 billion in spending. He taxed Social Security. He taxed cigarettes. He taxed liquor. He taxed gasoline. He let go some 100,000 Federal employees, and he was on the right track until November when the contract now is the attention, almost like spectator sport up here. And so it is Annie get your gun; anything you can do, I can do better.

We are not really talking in terms of substance. We are only talking in terms of symbols. You can adopt the Contract With America in the next 10 minutes and not a single bill is paid and not a single job is created. So if we could put in the Marshall Plan and start investing in people—we are talking about putting people first—if we can go back to the theme upon which the distinguished President was elected and then turn to a competitive trade policy, we can start rebuilding our economy and our strength and thereby our influence.

Our foreign policy and security as a nation is like a three-legged stool. You have the one leg of the values of the country, and we feed the hungry in Somalia; we build democracy in Haiti. We have the second leg unquestioned there, too, that of the military. The third leg, the economic leg, has been fractured, intentionally so, over the past 45 years with the special relationship that we had to support the fight of the cold war against communism. But now with the fall of the Wall, it is our opportunity not to dismantle the Government but to rebuild the Government, not to reinvent the Government but to rebuild it.

I ask unanimous consent, Mr. President, that ''Perspective—Challenge for the New America,'' be printed in the RECORD.

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

[From the Charlotte Observer, Mar. 12, 1995]

CHALLENGE FOR THE NEW AMERICA

(By Ernest Hollings)

Our economy is broken. Our society is splitting apart. Our nation is in decline. Forty million Americans live in poverty; 10 million Americans are homeless; 12 million children go hungry every day; and more than 39 million of us don't have health care.

America, land of opportunity, today is a frightening picture. The cities have become centers of crime and violence, the schools have become shooting galleries, the land drug-infested. The hard-working have no job security. Those with full time jobs are making 20% less than they did 20 years ago. And 73% of the generation of the future—those who are 17 to 24 years old—can't find a job or can't find one that will lift them out of poverty. For the first time in our history, today's younger generation will not live better than their parents. We're developing into a two-tiered society of the haves and have-nots.

And what does the Contract with America promise? Procedure Process. Delay. Adopt the Contract in the next 10 minutes and no job would be created, no bill would be paid. It's true that the Contract makes a lot of headlines about issues of concern. But it makes no headway.

We in Washington act as if we were elected to cheer rather than to govern. Our duty is to get out of the grandstand, get down on the field and score. To score, the United States needs to launch a Marshall Plan to rebuild America. But many feel we don't have the money. Like George Bush, they contend we ''have more will than wallet.'' Nonsense. We have more wallet than will. We just refuse to pay our bills. As a consequence, our wealth is wasted on paying the interest costs of a soaring debt.

Pretending that economic growth and spending cuts alone could cure the deficit, David Stockman said, ''We have incessantly poisoned the political debate with a mindless stream of anti-tax venom.'' The result today? A spending spree of $1 billion a day that services a debt that grows like topsy. To put a tourniquet on this hemorrhage, we must freeze spending, cut spending, close tax loopholes and enact a 5% value-added tax, which would put the government on a pay-as-you-go basis. With this in place, we can provide a Marshall Plan to rebuild America.

First, we must invest in proven programs that save money and people, such as the WIC (Women, Infants and Children) nutrition program: childhood immunizations; Head Start; education; biomedical research and more. Next, we should promote savings and investment with revamped Individual Retirement Accounts and research tax credits for industry. And we should reinstitute revenue-sharing to pay for unfunded mandates and to rebuild the decaying infrastructure—roads, bridges, schools—of our cities and states.

COMPETITIVE TRADE

At another time of crisis, Abraham Lincoln said we must think anew, act anew and disenthrall ourselves. If we can think anew, about spending and taxes to develop an American Plan for America, we must disenthrall ourselves from the buzzwords of this town—''protectionism,'' ''industrial policy'' and ''distrust of government.''

The very fundamental of government is protection. We have the Defense Department to protect us from enemies without, and the FBI to protect us from enemies within. Medicare and Medicaid protect us from ill health. Social Security protects from the ravages of old age. We have clean air and clean water provisions to protect the environment. And of course, we have a raft of protections against free market forces—minimum wage, unemployment security, anti-trust laws, safe machinery, safe working places, plant closing notices, parental leave—which all added to the costs of production. All of these protections have sweeping bipartisan support so we can maintain our high standard of living.

In today's low-wage, controlled global competition, the U.S. living standard must be protected. But after 50 years of operating—and losing—under the free trade model developed by Adam Smith, the United States must realize that it needs a competitive trade policy to win the war of ever-increasing trade deficits. Unlike Smith, who believed the wealth of a nation was measured by what it could buy, we live in a world where wealth is measured by what a nation can produce. Trade policy is not a moral question of ''being fair,'' but a question of whether it strengthens or weakens the economy.

Our government should stop kowtowing to the multinationals and start protecting our economy. Instead of having 28 departments and agencies in government that deal with trade, we need to orchestrate them into one entity to guide national trade policy. Similar to the National Security Council, we need a statutory National Economic Council to direct trade policy and globalize our industrial policy. We don't need a bunch of new laws. We need to enforce the trade and dumping laws that are on the books now.

To augment a competitive trade policy, we need to embellish the Advanced Technology Program, regional manufacturing centers and small business loans for technological development. We should use market access to encourage voluntary restraint agreements for those products important to our national security. We must change archaic securities laws to favor long-term investment. And if forced, we can translate the inspection practices and nontariff barriers of our competitors into English by withholding market access until the United States is permitted market access.

Ten years ago, 26% of our work force was engaged in manufacturing. Now, it's dwindled to 16%. If we lose our manufacturing power, we'll cease to be a world power. We need a competitive trade policy and an American plan for America to get the country moving.

U.S. CAN-DO

The United States is a can-do country. Since the beginning, it always has looked to the people's government in Washington to lead the way. And today, as spiraling deficits and free trade threaten our standard of living, our challenge is to use government to get us out of this mess. Look how successful we've been:

It was the Washington government that enacted the land ordinances that opened the West to pioneers.

The Washington government built the roads, canals, harbors and the transcontinental railroad that poured our rich resources into factories.

The Washington government produced the water projects that transformed the Midwest desert into the breadbasket of the world.

The Washington government brought electricity to rural America.

When free enterprise failed in the Depression, the Washington government lifted us from despair and rebuilt our economy.

The Washington government saved the world from fascism.

The Washington government broke the back of racial discrimination and set us on the road to equal justice.

The Washington government joined science, industry and education and put a man on the moon.

We can repeat our past successes. Enough of this chant to get rid of the government. As John Adams said, ''The declaration of hostility by a people to a government made by themselves, for themselves and conducted by themselves is an insult.''

And enough of these information-age buzzwords of reinvention, reassignment, dismantling and devolution. Now is the time to quit playing with symbols and go to work on substance.

Mr. HOLLINGS. Let me just read this because this is what we had in mind and spoke of back right after they submitted the contract and talked about in November so reverently, and I read now because I do not want people now to think I am joining the comments with respect to extremism. I do not differ with them. I salute the distinguished Senator from Montana, the Senator from Minnesota and others, but I read because we have got to give the people hope in this environment. And I read this.

The United States is a can-do country. Since the beginning, it has always looked to the people's government in Washington to lead the way. And today, as spiraling deficits and free trade threaten our standard of living, our challenge is to use Government to get out of this mess. Look how successful we have been.

It was the Washington government that enacted the land ordinances that opened the West to pioneers.

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It was the Washington Government that brought electricity to rural America. When free enterprise failed in the Depression, the Washington Government lifted us from despair and rebuilt our economy. The Washington Government saved the world from fascism. The Washington Government broke the back of racial discrimination and set us on the road to equal justice. And it was the Washington Government that joined science, industry and education and put a man on the Moon.

We can repeat our past successes. Enough of this chant to get rid of the Government. As John Adams said, ''The declaration of hostility by a people to a Government made by themselves for themselves and conducted by themselves is an insult.''

I yield the floor.

LOUD AND ANGRY VOICES

Mr. GRAMS. Mr. President, I rise this afternoon with a question: Where are the loud and angry voices?

President Clinton traveled to my home State of Minnesota yesterday to speak out against what he called the ''loud and angry voices * * * the purveyors of hatred and division'' that he claims have fostered a climate of profound distrust in government.

Mr. President, I will concede that there is indeed deep discontent in the heartland, some of it focused on the Federal Government; discontent was reflected at the ballot box in November.

People are fed up with a government they believe has grown too big, too overpowering, too unresponsive. They heard the conservative message of less government and it hit home. Just as Americans have done time and time again throughout the history of this Nation, they started a revolution of ideas by voting for a change.

Now, that is what courageous Americans do—they vote. Courageous Americans do not plant bombs. Courageous Americans do not murder their neighbors and their neighbors' children. Cowards do.

I have been receiving telephone calls from angry constituents, furious that—simply because they consider themselves opponents of bigger government or higher taxes—that their President would seek to somehow tie them to the actions of the desperate few who committed unspeakable violence in Oklahoma City. Why stop there? Why not blame fertilizer producers and the folks who sell it? Why not blame the employees who rented out the truck that carried the bomb? Or the Federal Government itself?

I will tell Americans why we cannot—and must not—play the blaming game: because the only individuals responsible for this tragedy are the very cowards who built the bomb, parked in front of that building, and in that horrible explosion, took innocent American lives.

For some things that happen, there is no reason, and out of anger we tend to blame. We must not blame each other.

Those who did this—they alone are responsible, and they should be brought forth in the American tradition of justice and held accountable for their actions.

We must remember the pain of Oklahoma City, but this is not a time to score political points or to somehow use the victims of this tragedy as the pawns of some crazy chess match. This is a time for healing, for sticking together. We should be drawing ourselves closer to our fellow Americans—not pushing each other apart.

Mr. President, democracy can be a hazardous endeavor. There are deep risks—but equally deep riches to be gained—every time a civilization is entrusted with the freedom to govern itself. A government ''of the people, by the people, and for the people'' can never be sealed off from the world.

We cannot pass enough laws to prevent what happened in Oklahoma City. But with the promise of punishment that is swift and severe, we make a bold statement that the vicious actions of a few will not be tolerated within a democracy.

If President Clinton had listened carefully during his visit to Minnesota, he would have heard the same loud and angry voices that I hear echoing across this country. The loud and angry voices I hear are not political or ideological. They are the voices of real people—in Oklahoma, in Minnesota, and across the country—who have witnessed this awful tragedy and are demanding justice.

We would not serve them well by politicizing tragedy. Instead, we must punish those who committed this act, stand by those who were injured in the blast, and keep forever in our memories respect for those who lost their lives on April 19, 1995.

Mr. CRAIG. Mr. President, my heart goes out for the families and friends of those brutally murdered by the senseless bombing in Oklahoma City last week. It was a cowardly act, perpetrated against fathers and mothers, children, aunts and uncles, brothers and sisters, friends and fellow Americans. While our prayers go to the survivors, the community and the brave soles doing the gruesome work of recovery, I am sure each of us, in our own way have uttered, why and ''there but by the grace of God go I.''

There is not justification for such an act of barbarism; no circumstances under which our society can tolerate such actions. Those who would wantonly take the lives of innocent citizens, also destroy the fabric of our freedom. They must be caught. If found guilty, they must be dealt the harshest penalty the law will allow.

As a nation, we must draw a clear line between what is acceptable disagreement with Government and what is just plain lawless brutality. But in our sorrow and anger, we must be mindful to draw that line carefully.

Our Constitution dictates the middle ground between measured justice and reckless retribution. It is a time tested outline for what is too much Government and what is too little. It is the very framework of our liberty. Even so, there are plenty of instances in the history of our Nation where its umbrella of protection was bent by public outrage or fear and the rights of individuals or groups have been suspended for what was viewed as ''the public good.'' And in almost every case, those have been mistakes.

In retrospect, few of us can really defend the wholesale incarceration of Americans of Japanese descent at the outset of World War II. It must have seemed the proper action at the time.

None of us can now defend Senator Joe McCarthy's witch hunt for communists in the entertainment business, although we were a nation in fear of spreading communism.

Few of us who remember the civil disobedience of the late sixties, can defend the excess of Federal investigators who tapped the phones of dissidents, investigated the lives of civil rights leaders or spied on those whose only crime was having strongly held opinions that opposed the official position of our Government.

Make no mistake. Those who executed this bombing are outlaws of the worst kind; misguided and sick people hiding behind some cause so they can inflict human suffering on people they don't even know.

But they in this case doesn't include everyone in America who opposes Government excess.

It doesn't include people who choose to exercise their constitutional right to assemble, right to free speech, right to keep and bear arms, to practice responsible civil disobedience, or to disagree with the Federal Government.

Neither the ultra right nor the ultra left, neither conservative radio programs nor the liberal media are guilty of this crime. The criminals who did it are responsible.

Those who would use this act of barbarism to lay blame on their political or ideological enemies, do every citizen of this Nation a great disservice. They are attempting to place the blame somewhere other than on the shoulders of the criminals themselves, not because of their grief, but the callous political self interest.

It also shows they have a shallow understanding of what makes our country great.

In this Nation, the rights of the individual come first. The guilty must be found, tried and punished.

The rights of the innocent must be preserved.

In this Nation, ideas and beliefs are not crimes. God forbid that they ever will be.

That is the constitutional prescription for our freedom. It should not be sacrificed for the short term political gain or national comfort.

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

● Mr. HATFIELD. Mr. President, the sense of the Senate resolution offered by the Senators from Oklahoma and the majority leader and minority leader reflects the desire of the U.S. Senate to voice its outrage at the horrible bombing of the Federal building in Oklahoma City as well as our desire to see swift punishment for those responsible. The resolution also offers the Senate an opportunity to express concern and sympathy for the lives tragically affected by this crime.

To the families of those injured or lost in the bombing, I offer my deepest sympathies. We all offer our thanks to the rescue workers, volunteers and law enforcement officials who have responded to the crisis with bravery, compassion, and extraordinary professionalism. Out of the depths of the despair caused by this criminal act, Americans are finding renewed unity and strength as we face together this adversity.

Right after the blast I was asked if this type of attack is the price our Nation must pay for a free and open society. I do not accept the thesis that we must live in fear—for our lives, for the safety of our children, or for our own ability to express ourselves. After all, our Nation is founded on the principles of protecting life, liberty and the pursuit of happiness. None of these precepts was honored by the terrorists who ended or forever altered the lives of the victims of the Oklahoma City blast.

I personally rely upon my faith to help understand this tragedy and gain a sense that justice will be served. As a Senator, I will join every other government official in the effort to ensure that the hunt for the perpetrators of this crime is successful and swift. And although I cannot support the imposition of the death penalty because of my longtime conscientious objection to it, I nonetheless condemn the crime in the harshest terms and am eager to know that the criminals are behind bars.●

THE 100TH ANNIVERSARY OF THE COMBINED JEWISH PHILANTHROPIES

Mr. KENNEDY. Mr. President, it is a privilege to join today in celebrating the 100th anniversary of the Combined Jewish Philanthropies.

The Combined Jewish Philanthropies has always been at the forefront of issues vital to the Jewish community, and I have been proud to work with members of this organization. As an organization that grew from 5 Jewish agencies in 1895 to more than 80 agencies in 1995, it has developed into one of the most successful charitable organizations in the world. Throughout these years, the CJP has had extraordinary success in improving the lives of countless people.

The CJP has helped to alleviate the horrors of the past by assisting in the rescue and resettlement of hundreds of thousands of survivors of the Holocaust, and it has faced the challenges of the present by assisting in the emigration and resettlement of large numbers of Soviet Jews. It has also laid a solid foundation for promoting social justice through programs that create jobs, help the needy, care for the elderly, and educate children.

During my years in the Senate, I have been proud to work with members of the CJP on many social programs in Massachusetts, including Jewish vocational services, family services, and Big Brother/Big Sister programs. We have worked together to develop counseling and job training initiatives for the Jewish community in our State, and we have helped over 5,000 Jewish immigrants during the past 6 years find jobs in Massachusetts. We have also worked together to ensure that young persons in need of role models have the opportunity to participate in the Big Brother/Big Sister programs in Massachusetts. It has also been a privilege to work with the CJP against antisemitism in the former Soviet Union and for the right of emigration.

The CJP's centennial celebration comes during a time of great challenge and great opportunity for the friends of Israel. All of us deplore the tragic violence that continues to plague the peace process in the Middle East. But I look forward to working closely with the CJP, the Clinton administration, and my colleagues in Congress, to secure a just and lasting peace and to ensure that Israel's vital security interests are protected.

I extend my respect and warmest wishes as the CJP enters its second century.

VOLUNTEERS HELP KEEP CALIFORNIA BEAUTIFUL

Mrs. BOXER. Mr. President, I rise today in support of thousands of California volunteers who have contributed their time and hard work this month to ensure California remains the Golden State that its people, the rest of the country, and the world have come to treasure.

April is Keep California Beautiful Month, and the nonprofit Keep California Beautiful, Inc., supported by thousands of individuals and businesses, as well as county, State and Federal agencies, have organized more than a hundred community-based projects to improve and maintain our publicly owned lands and facilities, from parks in inner cities to the wide-open spaces we all love. The specific objectives are to reduce litter, remove graffiti, expand recycling, and enhance natural resources in urban and rural areas.

This year, 1995, is the beginning of what we all hope will be an ever-increasing annual event in the years to come. As we tighten our belts and streamline government at all levels, volunteer efforts like Keep California Beautiful become even more important. In fact, the synergy created by the private-public partnership of this effort will, I believe, actually multiply our capability to do the hands-on work needed in all parts of the State.

This year's success will be the first of an ongoing annual event for years and years to come. That way, not only are we improving California for our children, but hopefully our children will improve it for their children. It is that kind of spirit that makes California special.

I commend my fellow Californians for their efforts and encourage everyone to get involved in Keep California Beautiful Month next year.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, the skyrocketing Federal debt, which long ago soared into the stratosphere, is in a category like the weather—everybody talks about it but almost nobody had undertaken the responsibility of trying to do anything about it until immediately following the elections last November.

When the 104th Congress convened in January, the U.S. House of Representatives approved a balanced budget amendment. In the Senate only 1 of the Senate's 54 Republicans opposed the balanced budget amendment; only 13 Democrats supported it. Thus, the balanced budget amendment failed by just one vote. There will be another vote later this year or next year.

As of the close of business yesterday, Monday, April 24, the Federal debt stood—down to the penny—at exactly $4,839,548,467,525.15 or $18,371.01 for every man, woman, and child on a per capita basis.

A NATIONAL DAY OF SERVICE

Mr. ROCKEFELLER. Mr. President, I commend Americans who are participating in the National Day of Service. Today, people all across this Nation are working together in community service. As we speak, people of all ages and backgrounds are using their hands and hearts to show their American spirit.

This day should remind us all of what it means to be an American, for today, our people are standing side by side. They are gathering, not to discuss their differences, but to pursue common goals.

Today, Americans are standing side by side immunizing infants. They are standing side by side tutoring school-age children. They are standing side by side restoring urban parks, feeding and sheltering the homeless, and rehabilitating housing and community centers. Today, we stand united as Americans.

In West Virginia, people in Braxton County will work together to create a nature trail near the Braxton County Middle School so students can learn more about their environment. In Welch, people are working to clean a vacant school so it can be converted in a facility to offer a safe shelter for victims of domestic violence by the local agency known as SAFE, Stop Abusive Family Environments. These activities for National Youth Service Day are just a few examples of important community work sponsored by the West Virginia Commission National and Community Service.

This day strikes a warm, familiar chord for me personally. From personal experience, I know the benefit of working with others to build better communities.

In 1964, the VISTA program brought me to a coal camp community in Emmons, WV. There, I followed Kennedy's call to service and worked with the people of Emmons, trying to do my small part in building a stronger community.

Together, we built a baseball field and a community center. We brought the people much needed preventative health care. We rallied to bring a schoolbus to Emmons and helped to keep Emmons' kids in school.

From personal experience, I know that community service benefits participants as much as it benefits communities. My work with VISTA taught me a very important lesson: That I can make a difference.

Today, the people of America celebrate that same lesson: Each and every American can make a difference.

Let us all be careful not to forget that important lesson at the end of the National Day of Service. Let us remember and reaffirm that lesson every day of the year.

Why must we remember the lesson every day of the year? The reason is simple: Community service programs work.

Just look at the resounding success of AmeriCorps. AmeriCorps gives thousands of young Americans the tools to make a difference in their own lives and in the lives of others.

AmeriCorps participants perform vital services in America. Just over 6 months ago, 85 West Virginians were sworn into AmeriCorps. Today they are working with 20,000 people nationwide to keep schools safe, restore natural resources, tutor teenagers, and more—all in exchange for education.

Programs like AmeriCorps simultaneously open doors to higher education and help build stronger communities. They allow Americans to help each other, and build trust, understanding, and hope.

Mr. President, I am proud to stand in support of the National Day of Service. I salute everyone working in community service. I congratulate each of them for making a difference.

TRIBUTE TO DAVID MARTIN

Mr. DODD. Mr. President, I rise today to pay tribute to David Martin, a distinguished public servant, an inquisitive adventurer, and a uniquely warm individual.

I came to know David when he served on the staff of my father, the late Senator Thomas J. DODD. To my siblings and me, however, David Martin was much more than an employee of one of our parents. He was more like a beloved uncle and insightful teacher wrapped into one.

I recall spending a number of delightful evenings at David's home with my family engaged in stimulating conversation. One could not come away from talking with David Martin without learning something new. He was a gripping conversationalist.

He was very unassuming and did not aggressively advertise his superior knowledge. You had to probe to find that rich vein, but once you succeeded, your reward was real and immediate.

David had such a dynamic and engaging intellect that he was a magnet for some of the 20th century's foremost authors and thinkers. He counted Ralph Ellison, George Orwell, Norman Mailer, William F. Buckley, Jr., and Edward Teller among his friends.

David's biography is so varied and fascinating that it reads more like that of a protagonist in a novel than a real-life individual. He was a veteran, a war correspondent, a noted author of political science, a human rights advocate and a legislative expert. He even coordinated Richard Byrd's last expedition to the South pole. David Martin was a true renaissance man.

His three books on Yugoslavia are still required reading for anyone who wants to understand that troubled part of the world. He was a passionate advocate for refugees, and as executive director of the Refugee Defense Committee from 1946 to 1947, he was instrumental in ending the inhumane practice of forcible repatriation of war time refugees to the Communist eastern bloc.

David was legendary in the Senate for the breadth and depth of his expertise. During the 11 years he served on my father's staff, David was a key mover behind the eventual adoption of the limited test ban treaty. He also advised my father on a range of foreign policy hot spots, from Germany to Africa, from the Dominican Republic to Southeast Asia.

After working for my father, David went on to the Senate Judiciary Committee, where he organized hearings on marijuana that are generally credited with alerting the public to the true danger of the drug.

David's first wife, Judy Asti, whom he married in 1947, died in 1971. He remarried in 1974 to Virginia Worek Levy. He is survived by Virginia, as well as his two children, Joe and Rebecca; his brother, Maurice Manson; and two stepsons, Ian and Raoul Levy.

Today we live in a better country and a better world thanks to David Martin. I think that is among the highest praise that can be given to an individual who has passed away, and in David Martin's case it is richly deserved.

ANNIVERSARY OF COL. CHARLES SHELTON CAPTURE IN LAOS

Mr. FORD. Mr. President, Saturday, April 29 marks the 30th anniversary of Col. Charles Shelton's capture in Southeast Asia.

Colonel Shelton grew up in my hometown, Owensboro, KY, where you could find him playing football for the high school team, courting his wife, and developing the values that would later serve him so well as he served his country.

Like so many other dedicated American soldiers, the day he left the United States to fly secret reconnaissance missions over Laos, he put his life on hold, whether that meant the dreams and ambitions of an individual life, or the simple pleasure of watching his five children grow into adults.

But, when he was shot down on April 29 and captured, the notion of putting a life on hold took on a new and horrible dimension for Colonel Shelton and his family. That's because for the next 29 years, Colonel Shelton remained an official prisoner of war—the final U.S. military personnel to be so listed by the American Government.

Because of numerous reports of sightings and escape attempts well into the 1980's, it wasn't until 1994 that his children requested the Pentagon to change his status to presumed killed in action.

While we can't begin to imagine what this wait was like for Colonel Shelton or his family, we can pay tribute to his service and to the ordeal he and his

family endured in order to protect the freedoms we all enjoy in this country.

Mr. President, let me close by saying to the children of Colonel Shelton that we can never replace the years you lost with your father, but his marker in Arlington National Cemetery will serve as a reminder for generations to come of his heroism, his courage, and his unyielding love for this country.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I appreciate your recognition. I would like to use my leader time to make a statement on the pending resolution prior to the time to take our vote.

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

Mr. DASCHLE. Mr. President, 7 days ago, a brutal attack on a Federal office building in Oklahoma City left over 80 people dead, more than 400 injured, and a city and Nation shaken to its core.

On Sunday, the Nation observed a day of mourning. All Americans joined President Clinton, the families of victims, and the people of Oklahoma City in thought and prayer at the memorial service. With them, we thanked and honored the brave men and women who have aided in the rescue efforts at the bomb site. It was an added tragedy to learn Sunday that one of the rescuers, a nurse, lost her own life in the course of helping others.

The swift and efficient work of FBI and other Federal law enforcement in apprehending suspects reinforces the well-earned reputation of those agencies. Terrorists must know that no matter who they are, domestic or foreign, there is no place to hide from the reach of our law. President Clinton has made clear that those who committed this act will be pursued, found, convicted, and punished to the full extent of the law. He has the support of every law-biding American in that determination.

An act of terror—the intentional murder of innocent men, women, and small children—shattered the sense of security that Americans have enjoyed in an increasingly violent world. Our world has made us all vulnerable to the deranged and to the enraged. No one's security can be guaranteed against people determined to attack, to kill, to pursue their mad plans, Security cannot be guaranteed against those who have no concern for human life.

But that does not mean we are doomed to give in to the forces of insanity or mad rage. The human world has always been one of risks and dangers. Throughout human history, violence has erupted in wars and between individuals; human beings have been at risk from the forces of nature, from disease and accident.

Today's violence and terrorism come into our homes through television images. They have an impact that written reports of battles and tornadoes could never have.

No sooner had Wednesday's bombing been reported than scores of faked bomb threats began to be received from coast to coast. Federal buildings in Kansas City; Miami; Portland, OR; Dayton and Steubenville, OH; Casper, WY, and Boise, ID, were closed. In Omaha, the Zorinsky Federal Building was closed, and its day center emptied, by a bomb threat.

Television and wire service stories reported all these threats and others. No wonder Americans all over the country immediately felt at risk. The immediacy of live television, the awful images of wounded, bleeding, shaking people staggering out of the Federal building in Oklahoma City made every American watching a participant in this hideous tragedy. No one who saw the small children covered with blood, dazed and bewildered, will ever forget their eyes.

The deaths and injuries, have brutalized families all across America. A young woman from Spearfish, SD, serving in the Air Force, is among the missing. Married just 4 days before the bombing, she left her duty station at Tinker Air Force Base on Wednesday morning to go to the Social Security office in the Federal building in Oklahoma City to register her married name, and she has not been found. Her father, David Koch of Rapid City, her high school classmates from the 1993 graduating class at Spearfish High, and all who knew her have been devastated by this terrorist attack. That is true for literally hundreds of families and people nationwide.

The immediacy of television brings us closer together as a Nation mourning national tragedies, but it also makes each of us feel less safe, less secure in our daily lives.

We should not let ourselves forget that outbreaks of insane violence have occurred before. In 1927, for instance, a Michigan farmer unable to pay his property taxes bombed a school full of children, killing more than 40, because he blamed the construction of the school for his high property taxes.

Incidents like that were not as frequent in a smaller, younger nation. But they did not occur and despite the fact that they occurred, Americans in every generation remained true to the constitutional structure of Government that has given us the world's most free society.

We need to remember this fact, as my colleagues from Oklahoma said so eloquently this morning, of our history in the face of the Oklahoma City tragedy. This act of terrorism will have achieved a purpose if it robs Americans of their sense of security. It will have achieved a purpose if it leads us to respond irrationally. It will have achieved a purpose if public discourse turns to invective.

The deaths and injuries caused by the bombing of the Federal building must not be allowed to rip apart the fabric of our society.

The resolution the Senate is about to pass expresses the outrage and sadness of the Senate and the American people with respect to the bombing in Oklahoma City. It commends all those involved in the rescue efforts and the investigation. It offers our sincere condolences to all those who lost family members and friends in, and all those who were injured by, the bombing.

I want to clarify one point with respect to the resolution. It states correctly that the law authorizes the death penalty for terrorist murderers. Although the death penalty is not a sentencing option for those convicted of the World Trade Center bombing, the 1994 crime bill, which was enacted after the World Trade Center bombing, does provide for the death penalty in cases such as the bombing of the Federal building in Oklahoma City.

The resolution also expresses support for the President's and the Attorney General's statements that Federal prosecutors will seek the maximum punishment allowed by law for those convicted of the bombing. While some Senators support the death penalty for certain crimes and others oppose the death penalty as a matter of principle, there is a strong belief among all Senators that the apprehension, prosecution, and punishment of those who commit heinous crimes such as this one should be pursued as aggressively as possible. That belief is reflected in the strong support for this resolution.

Of course, words can never express the depth of our emotions at a time like this. Furthermore, our national response must be multifaceted.

We have to relearn the hard fact that our technologically advanced society has created new ways to make us vulnerable. And it will never be possible to develop enough technological security to make us invulnerable. Metal detectors and x-ray machines, and electronic ID cards all have their place in necessary security actions. But the bombing in Oklahoma City proves that you need not even enter a building to blow it up.

At the same time, we must become more vigilant and more aware. The number of bombing incidents in the United States has gone up more than fourfold in the last decade. In 1983, the FBI reported 683 bombing incidents. In 1993, the last year for which complete figures are available, the FBI reported 2,980 bombing incidents.

Few Americans realize this, but in an increasingly violent and fragmented world, we cannot afford to be complacent. There are some steps we can take to respond more forcefully and pro-actively to the threat of terrorism, whether it is home-grown or comes from abroad.

We must do more and focus more attention on the intelligence resources that may help detect potential terrorist attacks before they can be consummated. We should take up and pass President Clinton's anti-terrorism proposals. We should determine what additional tools the FBI and other law enforcement agencies may need to carry out their missions.

We should examine proposals for improved visa tracking of overseas visitors to the United States, so that those who overstay their visa time cannot simply vanish into society without a trace. We should take steps to alter our asylum procedures, so that those legitimately seeking political refuge can be admitted, while those using asylum backlogs as a pretext are not allowed to stay indefinitely, but let us remember, as well, that this tragedy was not the work of overseas terrorists, but of Americans, people who enjoyed the great freedom our Nation offers.

We have become accustomed to seeing terrorist attacks in other parts of the world—Bosnia, the Middle East, Europe, and Latin America. Americans have seen hundreds of smoke-stained people streaming out of the World Trade Center Buildings in New York City. In response, we have been quick to explain that the causes are nationalism, or religious fanaticism, or some other belief system with which Americans have nothing in common.

Americans have always been quick to seek reasons to explain what happens in the world around them. But there are events so monstrous, so evil, that they cannot be explained away. No human reasons can account for the minds that could conceive, or the hands that could carry out, this deed.

Nevertheless, it is natural and healthy for each of us to question and try to understand how this could have happened, and to think—beyond laws—about what we as a society might do to reverse the trends of violence and intolerance in America.

It is imperative that we find ways for Americans from diverse backgrounds with sometimes very divergent points of view to live harmoniously.

The first step toward that goal is for us to talk to each other. We must find better ways to do that. We must restore civility to private, and especially public, discourse. We should not permit our political or racial or ethnic or other differences to blind us to each other's truths.

If we listen to one another, we are likely to find our differences are not as great as some of the intemperate rhetoric makes them appear. We are likely to remember that what divides us is much less important than what unites us as a nation. We will never eliminate all our differences, but we will learn that we can live with them.

Each of us—as parents, neighbors, teachers, elected officials, candidates for office, journalists—has an affirmative responsibility to promote that kind of environment.

The bombing in Oklahoma City is the result of evil, misguided people. We do not yet know what their motivation was; we can only speculate. But we can ask ourselves if our increasingly hateful public discourse is falling on ears receptive to hate, if it is providing a context for hands ready to undertake hateful acts.

No one believes that the actions of any man are the fault of the speech of anther, but people are inspired and uplifted by words and ideas. We saw that at the memorial service in Oklahoma City. Words and ideas can and do inspire and uplift. But they can mislead and delude. All of us who speak and act in the public arena have an obligation to bear that in mind, for every time we speak, in effect, we are making a choice about what kind of environment we promote. The privilege of serving our community carries with it the obligation not to damage that community.

Americans now can and must do what earlier generations of Americans have done. We must mourn with the families of victims and pray for all the shattered lives and hopes. We must identify changes in the law that have the promise of making us safer. And we must continue to live our lives, saddened by the enormous loss, but rededicated to the social contract that binds us together and allows all of us from different backgrounds, with different ideas, to live together in peace.

CONDEMNING THE BOMBING IN OKLAHOMA CITY

The PRESIDING OFFICER (Mrs. HUTCHISON). Under the previous order, the hour of 12 noon having arrived, the Senate will now proceed to consideration of Senate Resolution 110, which the clerk will report. Under the previous order, the Senate will proceed to vote on the resolution. The clerk will report.

The assistant legislative clerk read as follows:

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

The Senate proceeded to consider the resolution.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from Vermont [Mr. JEFFORDS] are necessarily absent.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] is necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—97

Abraham	Feingold	McCain
Akaka	Feinstein	McConnell
Ashcroft	Ford	Mikulski
Baucus	Frist	Moseley-Braun
Bennett	Glenn	Moynihan
Biden	Gorton	Murkowski
Bingaman	Graham	Murray
Bond	Gramm	Nickles
Boxer	Grams	Nunn
Bradley	Grassley	Packwood
Breaux	Gregg	Pell
Brown	Hatch	Pressler
Bryan	Heflin	Pryor
Bumpers	Helms	Reid
Burns	Hollings	Robb
Byrd	Hutchison	Rockefeller
Campbell	Inhofe	Roth
Chafee	Inouye	Santorum
Coats	Johnston	Sarbanes
Cochran	Kassebaum	Shelby
Cohen	Kempthorne	Simon
Conrad	Kennedy	Simpson
Coverdell	Kerrey	Smith
Craig	Kerry	Snowe
D'Amato	Kohl	Specter
Daschle	Kyl	Stevens
DeWine	Lautenberg	Thomas
Dodd	Leahy	Thompson
Dole	Levin	Thurmond
Domenici	Lieberman	Warner
Dorgan	Lott	Wellstone
Exon	Lugar	
Faircloth	Mack	

NOT VOTING—3

Harkin	Hatfield	Jeffords

So the resolution (S. Res. 110) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

[Senate Resolution 110 was not available for printing. It will appear in a future issue of the RECORD.]

RECESS UNTIL 2:15 P.M.

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

Thereupon, the Senate, at 12:37 p.m., recessed until 2:16 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. KYL].

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. The clerk will report pending business.

The legislative clerk read as follows:

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

The Senate resumed the consideration of the bill.

Pending:

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

The PRESIDING OFFICER. The Senator from Rhode Island.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, awaiting others who wish to address this particular problem, I would like to emphasize, of course, the good that has been done over the many, many years when we have debated product liability. The sponsors of the bill here are looking for a problem to solve and disregarding the fact that the United States of America is the safest society with respect to manufactured products in the history of the world. That has been done in large measure due to that group of trial lawyers, damage suits, punitive damages, and other verdicts. With respect to punitive damages, they can only come about as a result of gross negligence and willful misconduct. And in my State, and in many of the States, some States do not even allow them. But in my State, if the trial judge himself does not find proof of willful misconduct to his own satisfaction, he just throws out that particular finding.

So punitive damages have been used very judiciously, and in reality, are seldom used. For example, we asked the particular witness who appeared before us at the hearings who had presented the issue of punitive damages before the U.S. Supreme Court, we asked him to please study and come back and report to us over the past 30 years the total amount of punitive damages found. I know from my own experience and otherwise that it was a small amount, relatively speaking. I cited at that particular time the $3 billion punitive damage verdict in the *Exxon Valdez* case.

And the gentlemen studied the particular findings of punitive damages over the 50 States in the past 30 years and it was $1.3 billion. Of all punitive damage findings, in all product liability cases, there was an amount less than one-half in one manufacturer's case.

That has been the problem, Mr. President, in the sense that the great number of punitive damages are industries suing industries. An example again was down in the Pennzoil case, in Pennzoil against the Texaco Co. in the State of Texas some years ago. Again there was another $3 billion finding. So I can just cite two manufacturer's cases where all the punitive damage findings in product liability cases amounts to one-sixth of the amounts of those two cases.

But look at the magnificent good that the tort system has done over many, many years. I think, for example, Mr. President, of the 4 million minivan recalls by Chrysler Corp. here in the last several weeks. Quite to the point. You do not find Chrysler Corp. recalling minivans to correct that faulty latch on the back door because they think it is just good business. They know good and well that they are going to get socked for actual and punitive damages if they willfully allow that particular defect to continue, to knowingly, willfully, heedlessly—recklessly is the language used in punitive damage awards—allow that to continue.

And as a result we will give the body before long over at the Department of Transportation information about the millions and millions of car recalls by the various automobile companies over the past several years, which means what? Which means exactly what we are trying to say. If you want to talk about Medicare, limit the damages, limit the recovery of the injured parties as a result of the neglect of these manufacturers as this bill does, and what will happen is that you and I will pick them up in Medicare and Medicaid costs.

In all my years of trial work, I have never really seen an injured party make money. And I can tell you less and less of those in the trial bar are joining that particular trial bar because the other is much more luxurious. If you can represent the industry, the business, the manufacturer, if you can represent, as some 60,000 lawyers here in the District of Columbia represent, lobbyist consultant causes, hardly ever entering the courtroom, you are into the game of billable hours. In my 20 years of active practice and over 40 years at the bar—almost 50 years now at the bar—I have never had a billable hour case. We are always practicing law from the standpoint of the success of the trial and the representation of that particular client.

But be that as it may, let me emphasize going right to the different studies made by the Rand Corp. and others, large manufacturers have responded to product liability suits by establishing corporate level product safety officers. In the 1987 Conference Board report, 232 risk managers reported that over two-thirds of the companies in this survey had responded to product liability by making their products safer.

I can go down the list of the various trials and findings that led to a change of practice, whether it is in the Dalkon shield case, or the Drano case. The evidence showed in the Drano case that, subsequent to the plaintiff's injury, the screw top on the can was changed because it caused it to explode. That particular design was changed on account of the plaintiff being awarded $900,000 in compensatory damages and $10,000 in punitive damages. With regard to firefighter respirators, three firefighters in Lubbock, TX, were killed as a result of a defect in their respirators, a hole in the diaphragm. A lawsuit revealed that the company knew that the respirator was unsafe. The manufacturer later corrected the mask as a result of the lawsuit.

I have a whole documentary of product after product after product being made more safe than ever before on account of product liability. We are all talking like product liability is a burden on society. It is an advantage to the American body politic because it brings out this safe conduct.

Specifically, Mr. President, just a few years ago, originally some 15 to 20 years ago, I went into Bosch, a manufacturer of fuel injectors in my backyard, which now has graduated up to making antilock brakes. I would think that any investor on the New York Stock Exchange would say wait a minute, before I invest in the antilock brake manufacturer, I can see that after a year one might go awry, after 10 years a car with an antilock brake might go and cause the one wheel to lock and the rest spill them over and cause, without even running into somebody else, a serious accident. I better not invest in an antilock brake manufacturer.

The truth of the matter is that I was introduced into the manufacturing plant itself, and I put coverings over my shoes, a smock around my clothing, a head cover over my hair and my head and everything else as if we were producing pharmaceuticals or film. We have the film making plants of Fuji that is doubling their size right now in Greenwood, SC. I have Hoffmann-La Roche actually building the most modern pharmaceutical plant in the world in Florence, SC, right this minute. And we have brought in Parke-Davis and Baxter and Norwich and the other medical pharmaceutical manufacturers. So we know about them.

I thought I was already into one of those film making plants where you could not stand the slightest speck of dust. I asked the manager at the Bosch plant, I said, ''Let me ask you about this plant. How many product liability claims have you had?'' He said, ''What's that?'' I said, ''Product liability claims. Defective antilock brakes, some of them going bad.'' He said, ''Oh, Senator, we have never had a product liability claim. If we had''—and he quickly ran over on the line there and picked up one—he said, ''See that little number. Every antilock brake that goes out of this particular plant has a serial number and we could immediately identify where and at what stage any kind of defect occurred, but we have never had it.''

Now, that particular corporation makes the antilock brakes for the Toyota, for the Mercedes-Benz, and was recently awarded a 10-year contract for all General Motors cars. This is what we have going on as a result of product liability. It is not the stultification or denial of the development of manufactured products or pharmaceuticals or whatever else. What has developed is far more safe to the consuming public.

We know that, and we appreciate it. The Consumer Federation of America, Consumers Union, every consumer organization of any credibility whatsoever in the United States of America, is absolutely opposed to this so-called reasonable bill. They know it, and I know it. It is not reasonable.

The bill in the last three Congresses never had caps. They have caps on punitive damages now in this bill. We never had in the last three Congresses the matter of misuse. Now they have a misuse provision. It allows them to get out from under the particular claims exemption. They have the exclusion for rental car exemptions, the matter of component parts. We can go right on down the different things that have been sneaked into this particular bill.

To talk in terms that I have heard recently about how you cannot pass product liability reform at the State level absolutely begs the question. The distinguished Presiding Officer knows that. He has it in his own State.

In 1988, in South Carolina, under a Republican administration, a Republican Governor, we had a get-together of the chamber of commerce, the textile manufacturers, the pharmaceutical groups, the trial lawyers, the medical bar and all insurance companies, and we got a product liability reform bill passed and signed by the Governor. Forty-six States have done that.

I heard just recently that, to do that at the State level would take 4 or 5 years because those trial lawyers would come in and delay it, because they like delay. Totally false. The sponsors of this bill do not understand that.

I am a trial lawyer. That is the last thing I want is delay. I know the game. The insurance company is going to ultimately pay, if at all, if there is going to be any recovery. The insurance company and the manufacturers' attorneys win every time if they can delay the case. Witnesses get lost, they ''malaccuse,'' and everything else of that particular kind, and all along that trial lawyer is having to pay for what? For the investigative costs, the medical experts, the depositions, interrogatories, the court costs, his own time and everything else on a contingent-fee basis.

You get 5 to 10 fairly substantial cases in your practice and you are carrying those for 2 to 3 years now. Do not tell me it will take 4 to 5 years, I will go broke. So I as a trial lawyer am trying my best to bring those cases to a conclusion. Yes, the trial lawyer does have a self-interest in bringing that case to a conclusion and as quickly as he can. The delay is on the other side. I know, because I represented the electric and gas company and the bus operator in my own hometown in defending injury claims against that bus company. Any time I got the investigators—and we can sit up there with the mahogany desk and nice Karastan rug, answer the phone and act dignified and do not have to worry about looking for any witnesses or talking to any doctors or anything else, just tell the investigatory team of the large corporation—and it was the largest corporation we had in the State of South Carolina at the time I represented them—''Go ahead and get all of those statements. Don't worry about it.'' ''Miss so and so, fill out interrogatories No. 52 and send that to the lawyers and I'll send them another bill.''

Oh, man, that is luxury practice. That is what you have downtown here. That is what you have with this crowd that is sponsoring this particular bill. They wrote it. The game plan now is quite obvious. The game plan is ooze and cruise. How reasonable and how fair and they call it the fairness act and all that nonsense, like somebody is fast asleep, and then go over there and get with the Gingrich contract.

Republicans are rolling over on this side with the Gingrich contract. He writes it over there. He tells them, ''You do this or you're out of it. You're not going to have your funds raised by us, you're not going to have our support in the next year's election and if you want to be on the team, you have to come out for practice and vote as we say vote.''

Right now they have in the morning news how they are trying to get them to sign a pledge about a budget. Can you imagine that? Like joining some organization or fraternity. I never was in a fraternity. They were against the rules at the campus of the college I attended. But you take an oath. So they have an oath of loyalty to whatever else—not to the people they represent or their conscience but what Mr. GINGRICH and the contract finds.

So we are in a dangerous strait here in this particular body. We will be asking for time to debate every one of these particular measures. You have not only the matter of the punitive damages provision in here, you have the exemption for the manufacturer. You would think that the conscience would get them, if you please, and they say, ''Well, it makes no difference.'' If it does not make any difference, I want them to go along with the amendment when we put it up that the manufacturer will also be under the provisions of this particular measure.

They have it for everybody but who? The manufacturer. The manufacturer is not subject to the provisions of this bill. It is a manufacturer's scapegoat if there ever was one. In good conscience, I just could not put up a bill like that and try to defend it amongst my colleagues. I would lose all my credibility. But that is what they have. They say it is not restrictive. Yet, certain evidence is not admissible. They say it is simplicity, eliminating duplication, the multiplicity of suits. They asked for a bifurcated system on the one hand for action and on the other hand for punitive damages and say you cannot on the willfulness part submit that kind of evidence in the actual damage claim over here for compensatory damages.

The Conference of State Supreme Court Justices came up, the National Conference of State Legislatures came up and said this is really going to bog us down taking the guidelines from Washington and trying to administer with new words of art and provisions at the State level. If there is ever one unfunded mandate, this is it. This is an unfunded mandate back at the States to cost more money, more legal costs and everything else of that kind, and they have the audacity to come forth with a straight face and say they are interested in the consumers getting the money because the lawyers are getting too much. That is out of the whole cloth.

Of all tort claims in the United States of America, rather of all civil claims filed in the United States of America, tort represents 9 percent of all civil claims filed. Of the 9 percent of tort claims filed, product liability represents 4 percent of the 9 percent, or thirty-six one-hundredths. We are not talking about medical malpractice. We are not talking about businesses suing businesses. We are not talking about Securities and Exchange Commission suits and class actions. We are not talking about automobile wreck cases. We are not talking about any of those kinds of injury cases. We are talking solely about product liability. It is not a national problem.

President Ford took this up starting back in 1976 with a special study commission, and after 4 years of findings, they found that the States were doing it. Sure enough, over the past 15 years, as I pointed out, 46 of the 50 States have just done that, they have upgraded, in a sense, their product liability laws.

Now cometh the theme, so to speak, of the revolution of the Contract With America. I never heard so many Republican friends of mine quote Jefferson, but all of a sudden Thomas Jefferson has gotten very popular around here in Washington these days. ''That Government closest to the people is the best Government.'' So when it comes to welfare reform, block grant it back, give it to the States. When it comes to housing, give them the money. When it comes to the crime bill, eliminate the cops on the beat, give them block grants back there. The people back home know how to better spend the money. They have the better judgment at the local level. You would think that 12 jurors having sworn under oath to listen to the particular evidence would better be able to make a judgment in a case. But, no, no, not with this manufacturers' bill. Corporate America has come to the scam here and they come and say: ''No, wait a minute, we have to reverse fields and we have to bring this to Washington, and do not worry about it, Washington, we are really not going to get uniformity because we are not going to give you a Federal cause of action,'' which I have been debating for 15 years. If you believe it is a Federal problem, give us a Federal cause of action. They said: ''No, what we are going to do is give you Federal regulatory guidelines.'' That is what this whole body is up against—regulatory measures at the State level. Here with this bill we are going to heap it upon them.

The body is up against the Washington bureaucracy to give it back to the local level. This whole body is all wound up about unfunded mandates here now. Come the end of April, we are going against the contract, and we are going to give them an unfunded mandate, and they know it. The whole body is saying that in welfare we have to make the recipient more responsible. Here we say that the manufacturer is not going to be responsible. We have all kinds of bars in here to protect the manufacturer. If you have any doubt about it, we will show you the section where the manufacturer itself is exempt from the bill. That is what we have going here with respect to product liability.

We have serious problems in this country of ours. But torts, historically, under the English system for 200 some years, has been a matter of the jurisdiction of the States. They are trying to give meaning to the 10th amendment. When I go home and turn on C-SPAN, I see the speakers about the contract say we are going to give meaning to the 10th amendment. Those responsibilities, not delegated specifically under the Constitution to the Federal Government, shall be reserved to the States. Oh, no, they say, on this one, if we can put over this one—how do you put it over? When you get in a campaign, Mr. President, you know how they have been putting it over because I get it from the other side. They come to me, the National Association of Manufacturers, in my campaign over the last 15 years, elected three times. They say, ''Why do you not go along with this thing? We have product liability problems''.

The chamber of commerce comes to you and the Business Roundtable members come to you, responsible civic leaders and all think there is a real problem. Why? Because Victor Schwartz, and the hired hands up here, a bunch of 60,000 lawyers, have been paid off. They say, ''Get ahold of that Senator and get a commitment from him because he has not committed.'' We tried to tell the business leaders, ''Look, wherein do you ever think that the National Congress in Washington, DC, is more conservative than your own legislature back in the State capital?'' I know from 40 years in government that temporarily, yes, you might have a more conservative government and group over in the House of Representatives. But give it a few more years and I can tell you from my experience up here, I would much rather have the State legislature find on this particular score. You might think you get temporary relief but in a few years, you will trip up on this rug and go up to the window and get your money. Business does not have a problem. The 232 risk managers under the Conference Board study showed that it was less than 1 percent of the cost of doing business.

When they get to talking about competitiveness, competitiveness, competitiveness, I have to smile, because I have been in the game for years and I wish they would point out—and they cannot—that we have over 100 German industries—recently BMW, recently Hoffmann-La Roche, and over 50 Japanese industries, and I got the blue chip corporations of America that came to my home State. Not once have they said: ''What about this product liability? We need some kind of solution to it.''

The fine businesses that like and respect safety are willing to put it into the cost of the product and into the practices, with safety offices and everything else in these particular entities all over the United States.

If you want safe manufacturing, you come to the United States of America. We take it for granted and we are about to strip it today and tomorrow and the next day, whenever we vote, trying our best to put in a fixed situation which is, frankly, an embarrassment to me having been on both sides of this particular problem in the courtroom representing businesses as well as representing injured parties. It is difficult, difficult, difficult in this day and age. You do not get runaway juries. They all know about insurance. They are very sophisticated. They have all good businesses. They know there is no free lunch. You have to prove by the greater weight of the evidence to all 12 jurors—all 12. If you miss one, your case is over with; you get a mistrial and you have a hard time getting back into the courtroom and all that time your costs and all are going up.

So in these civil claims of tort, if we want to get to the problem, let us go to the businesses suing businesses that have billions and billions of dollars, where these fellows sit around in the boardroom and say, ''I do not care, let us go to trial and let us show what we can do.'' I put in the RECORD here yesterday the most spurious of claims by different businesses for millions and billions of dollars, really, which says to me perhaps there is a problem. The most objective group—and if you had to characterize it, it could be characterized ''corporate''—is the American Bar Association. They have various divisions. The American Bar started really with the utilities and the railroad and other lawyers. They are the ones who had the money to go all the way to Chicago, all the way to New York or Los Angeles to a meeting. Working lawyers for individual clients never had that kind of money. They found out they were not represented. As a result, that is why you have ATLA, the American Trial Lawyers Association. I was in on the early days when it was organized. Now we have almost as many defense lawyers attend our ATLA conferences as plaintiff's lawyers. The defense lawyers come and learn and understand the various issues, the various demonstrative evidence that was started out years ago on the west coast by Lou Ashe and Mel Belli, and others, to keep a record, rather than an operation by ambush. Give everybody everything you have and say here is what I am going to prove. As a result, we have the Restatement of Torts and otherwise, and wonderful progress has been made in the field of law in the trial of cases over many, many years.

That has been done at the State level. What happened as a result is that the American Bar Association, once again, for the sixth time, has opposed this bill. They have prepared testimony and testified against the bill. You have the American Bar Association; you have the Association of Law School Deans and Professors—over 121—opposing this as bad law. You have the National Conference of State Legislatures and the Conference of State Supreme Court Justices. We have the credibility and the concern of the responsible consumer groups and other wise individuals—the AFL–CIO and everyone else who really understands the plight of injured parties. They all oppose this as a bad, bad, bad, prejudicial kind of measure that should not be in the National Congress. If there is a problem, the States are handling it well. This is part of the contract. I hope that in this context these folks will keep their contract with the American people.

Mr. BREAUX. If the Senator will yield, I would like to ask the Senator a question. One of the arguments I have heard on the side of the proponents of the legislation is that we have to do this in Congress, in Washington, because we have to have what they call uniformity among all of the States, and all of the States have to have the same laws when it deals with personal injuries that are derived from defective products that hurt people, that we have to have the same laws in all of the States.

It is my understanding that this legislation says you have to have uniformity, unless the State wants to make it even more difficult for an injured person to recover, and then we can have 50 States having 50 sets of different rules, if the rules make it more difficult for an injured person to recover. That is not uniformity.

Mr. HOLLINGS. Mr. President, that is not uniformity; the Senator is quite correct. More restricted measures are permitted.

The fact of the matter is that it is not uniform with respect to one of the big issues of concern, the matter of punitive damages.

In the distinguished State of Washington, home of the manager of this bill and the principal author, they do not have punitive damages. Where they have punitive damages, they are limited to $250,000, but they are not required by this bill in those States that do not have punitive damages.

There is no uniformity here. If they really wanted uniformity, we would have had ipso facto a Federal cause of action. Then we would have the rules, the simplicity, and the uniformity.

There is no attempt to produce true uniformity, even though we have had

this measure up time and time again, everyone has wondered about this particular measure and requirement of the States in their jurisdiction. There is a constitutional question involved, but they have said: ''Wait a minute; if we really want uniformity, please give a Federal cause of action and we will go from there.''

If we want a finding under the interstate clause, Congress has that authority and responsibility to make the finding and get a Federal cause of action. Then we have uniformity. But they use every gimmick to make sure it is not.

Mr. BREAUX. It is my understanding, does the Senator agree, that this uniformity argument really does not apply; if each State wants to make it more difficult for an injured person to recover, they have the right to do that?

Under this proposal, we could have 50 different States with 50 different sets of rules with regard to an injured person's ability to recover damages, if it is more restrictive than this bill.

Mr. HOLLINGS. That is right. Take every page of the bill—every page of the bill has certain legislative, congressional language. That is to be interpreted, the intent of that particular language is to be interpreted by the 50 several supreme courts of the 50 several, separate States. Then, in certain instances, it could go all the way to the U.S. Supreme Court. So they know that.

We would not have that if we had a Federal cause of action. We would have one jurisdiction and we would move with that and the lawyers and the parties would know where they are. They do not want them to know where they are.

There are certain roadblocks, restrictions, as indicated in your question. This bill says that, if we want to get more restrictive or want to put a greater burden to the injured party, fine. We do not mind at the national level.

If we approve this bill, we are saying as a Government up here, if people want to do that, the Government in Washington, the great white father, we approve that. If a State wants to be more considerate of the injured party; no, no. We, the Federal Government, the end-all, be-all of wisdom up here, the Washington bureaucrats, we say no.

Mr. BREAUX. If the Senator will yield, I think he has very clearly made the point we are talking about—fairness. This legislation does not represent fairness at all. I think the Senator from South Carolina has made that point very well. I thank him.

Mr. HOLLINGS. I thank the distinguished Senator from Louisiana. He has been a leader on this measure.

I can say manufacturers are not all that steamed up. They would have long since gotten rid of me. They have tried, and they have come pretty close the last time, so I am not bragging.

I can say right now, the manufacturers understand it. I met time and again with manufacturers, business leaders, bankers, and everyone else of that kind, and they begin to realize that.

I have asked, I challenged them, get a judge in the State of South Carolina that has just been put up to the circuit court of appeals, as has Billy Wilkins. Remember Judge Wilkins, who headed up a sentencing commission for President Reagan and was considered for the head of the FBI? Go back to Billy and say, ''Is product liability a problem here, really?'' He would say, ''Not in South Carolina, not in the State. They handle it well.''

This has not come from the judiciary or the American bar. This has not come from the consumers, whose interest it is supposed to—with that title, Fairness Act—supposed to represent. On the contrary, it is a manufacturers scam.

I yield the floor.

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

The PRESIDING OFFICER (Mr. ABRAHAM). 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.

Mr. GORTON. Mr. President, in the nature of attempting to correct a few, I think, inadvertent misstatements during the course of the last 24 hours, and also in the interest of speaking philosophically on at least one of the points made by my friend and colleague from South Carolina, I would like to speak briefly on three or four subjects.

Yesterday in his opening statement, the distinguished junior Senator from Louisiana [Mr. BREAUX] commented that although Louisiana State law does not allow punitive damages, S. 565 would preempt this refusal to allow such damages. It is quite important for me to correct that misapprehension, as my own State of Washington, like Louisiana, is one of roughly five in this country that does not permit punitive damages in most civil litigation at all.

As I said in my opening statement, if I had my way, I would abolish punitive damages in civil litigation. It amounts to an unlimited form of punishment, the risk of unlimited punishment in civil litigation at the absolute discretion or whim of the jury. My view of civil litigation is that it should be designed to redress grievances, to compensate fully individuals for actual damages that they have suffered, but should not be used for punishment.

So I would be extremely disturbed if we were dealing with a bill that included the preemption to which the Senator from Louisiana referred.

S. 565, which, in essence, is what we are dealing with in my substitute amendment, does not preempt the ability of a State to restrict punitive damages to a greater extent than are restricted in S. 565 itself.

Section 107, subsection (A) reads:

General ruling. Punitive damages may, to the extent permitted by applicable State law, be awarded against the defendant in a product liability action that is subject to this title.

And then it goes on to limit punitive damages in such actions. That is to say, that it does put certain limitations on punitive damages, but it does not mandate that a State must permit even up to that limitation in product liability litigation in those States.

While we are on the subject of preemption, there are two other similar areas in which there is no preemption in the sense, at least, that there is no preemption of a State prohibition against punitive damages. We have in this bill a statute of repose for certain manufactured items of 20 years. But if a State has a statute of repose as broad or broader than the one in this bill with a limit of fewer than 20 years, that statute of repose is not preempted.

Section 108, subsection (B)(2) reads:

Notwithstanding paragraph 1—

Which establishes a 20-year statute of repose—

If pursuant to applicable State law an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such a period.

And, finally, if a State law does not allow joint liability at all, S. 565, which bans joint liability for noneconomic damages, does not require a State to ban joint liability for economic damages.

All of this is relevant because in a conversation an hour or so ago on this floor between the distinguished Senators from Louisiana and South Carolina, the criticism was raised that if we are going to go for uniformity, we should require absolute uniformity; that there is something perverse or something wrong about a preemption in one direction without a preemption which is all encompassing in nature.

In fact, I believe the Senator from South Carolina went beyond that point to say that if we desired uniformity in product liability litigation, we should transform what is now a State cause of action to exclusively a Federal cause of action and have identical rules applicable in every State in the country.

I find it curious that we should so frequently in this body be faced with an argument that because we seek to reach a certain goal, we have to do it absolutely and without exception.

I believe that it is the essence of our system that we are constantly adjusting our rules to meet the present needs of the society. I do not believe that we must act mechanistically and, of course, we do not act mechanistically. Usually, this kind of argument is brought up simply because the entire concept is opposed by whoever presents it.

I began my remarks on this bill yesterday by saying that obviously there

are two purposes of society on which sometimes the margins come into conflict. Clearly, in connection with this litigation, one is the regressive grievances, is the proposition that courts should be open to citizens of the United States and of the respective States to sue when they feel that they have been wronged. The other is economic efficiency, is the encouragement of the creation of jobs, of research, of development resulting from that research, the marketing of new and improved goods and pharmaceutical drugs, and the prevention of the irrational and unreasonable withdrawal from the market of goods and services which are of great use to most of society but which occasionally are accompanied by adverse reactions on the part of a few consumers.

So what we are trying to do here is to deal with the proposition that the proponents of this bill—and I think the clear majority of the Members of this body—feel that the pendulum has swung too far in favor of litigation. This should not be a surprise. We read about this constantly, we hear about it constantly, and we know that we are the most litigious society, literally, in the history of the world. It seems quite evident to most citizens that the operations of our society and of our economy are often inhibited by the amount and the nature of much of the litigation with which the people of America are faced.

And so here we seek, in a modest way, in one field of litigation, to put some limits on that litigation. We do not do so by depriving anybody of a cause of action. Every cause of action that exists at the present time will exist if this bill becomes law. But we do put some inhibitions in the way of the pursuit of punitive damages, damages which do not, by their very nature, compensate for an injury. We put limitations on the ability of plaintiffs to recover from defendants beyond the responsibility of those defendants with a particular harm. And, yes—I must correct myself—we do under some circumstances deprive people of causes of action with respect to equipment and manufactured items which are more than 20 years in age.

That does not mean that we feel we have done everything that might appropriately be done. We feel that these limitations are reasonable and should be universal in nature. But that does not automatically carry with it the philosophy that no one else, no other State, can feel that other limitations, greater limitations, are also appropriate. We need the experimentation of a federal system in that connection. Nor do we feel that because we desire somewhat greater uniformity in the law, we have to have absolute uniformity. Now, with 50 States and the District of Columbia, each with a different legal code, there is a total lack of imposed uniformity in the law relating to product liability, in spite of the fact that the production and marketing of products is national in nature. Of course, I suppose we can say we should go from no mandatory uniformity at all to 100 percent mandated uniformity. Personally, I think that would be absurd. I think most Members of this body think it would be absurd. There is not the slightest chance that this body, in its wisdom, would federalize the entire product liability system. But that does not mean that a greater degree of uniformity that we have at the present time is not socially desirable. We—and even more important than we—the market thinks that a greater degree of uniformity is essential. So we go toward the center. We attempt to get that pendulum back into a centerpiece. We are seeking balance. So we do not intend to go to the extremes with respect to product liability, and we do not in this bill.

We do not intend to go to the extremes with respect to joint liability, and we do not in the course of this bill. We do not adopt the shortest possible statute of repose in this bill, and we do not demand absolute uniformity in this bill.

In the four most important elements of this bill, we seek not some kind of pure ideology, but an appropriate balance, a greater degree of encouragement for the economy to create jobs, competitiveness, new and improved products, certain limitations on the kind of litigation problems which plague our society, and we feel it is this middle ground that is the appropriate ground. That is the rationale that, I think, is overwhelmingly appropriate for the way in which we treat preemption in each of these areas.

Mr. President, I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I rise in opposition to this bill. It is entitled the Product Liability Fairness Act. In my judgment, that is the biggest misnaming of any bill that I have seen come before this body. It is a misnomer because, in my judgment, it is very unfair and one-sided. It is sort of like you have seen in the fine print—you know, everybody's choice—they say it is a contract you entered into. It is one of those take-it-or-leave-it sort of things, in that here we have a very unfair bill. I will be going into that as we discuss this over the next several days.

I want to discuss several things. First, my friend from the State of Washington says that he would like to do away with all punitive damages, and I wonder if he has thought that when a company hires employees—chemists, engineers, and so forth—who have had a record of alcoholism or drug abuse and nevertheless the manufacturer exposes the public to those types of people and a person is injured, should not that company be punished?

Let us consider a case—this is not in product liability situation—where a person is driving where an automobile accident occurs, and the driver of one car has 10 beers, crosses the center line, causes an accident, and man loses his leg, as compared to an accident in which a bare distraction causes damage to someone.

I think both the people who lose legs regardless should be entitled to recover compensation, but the man who was under the influence of 10 beers, and who got behind the wheel and injured someone, ought to be punished.

The concept of tort liability is that there is a wrongdoer and someone is injured as a result thereof. The whole basis of our law that has developed over the common law over the years is being that the wrongdoer must pay.

So are we talking about a situation in which we want to put all wrongdoers on the same level? Human beings differ. In regard to injuries, the loss of one, two, three fingers—if I were to be injured by a machine that did not have a proper guard on it—those three fingers that I lose may be different from the three fingers that a violinist loses.

So we make distinctions in regard to individuals. There are a lot of aspects of noneconomic damage that we fail to give appropriate attention to. A young woman who loses the capacity to have a child, a young woman whose face is scarred in a fire—all of those are noneconomic pain and suffering.

In Russia, when Chernobyl, the nuclear plant, experienced a meltdown, the people who suffered radiation and who suffered in many ways, many of those suffered noneconomic damages, but they ought not to be limited in their compensation.

Now, I realize that in some aspects there have been changes in the bill before the Senate. Changes that have been made, designed to be able to get it passed in the Senate. I do not think anybody here fails to realize that the House of Representatives passed a bill that was written with one purpose in mind—to see that awards are substantially reduced and that the injured party does not receive what they really are entitled to.

Whatever the Senate were to pass, if cloture is obtained, will go to conference. What will come out of conference will be the bill that will go to the President.

Looking at who the players are, the cast of characters, who will be in conference, I do not think there is much question as to who will prevail. I think the Speaker of the House will prevail, relative to the bill that comes out of conference.

There is no question that he has shown superb leadership in getting legislation passed in the House and in being able to bring about party discipline and to attract others. I do not sell him short on what the conference version of this bill will be like.

Now, I want to go over a few things in this bill and in the House-passed bill, and list what in my judgment I think the final version will be.

Both bills exclude commercial loss. Commercial loss by business—which includes loss of profits, destruction to facilities, everything else—does not come under this bill or the House bill.

Why, then, if the provisions of this bill are so great and so needed that corporate America is excluded from it? There are a lot of examples. We have a machine that blows up in a factory because of defective manufacturing. That machine blows up and people on the sidewalk and other places are injured. They come under the provisions of this bill. However, the company itself can sue the manufacturer of the machine for lost profits, for the destruction done to the physical property, for numerous elements of damage. They do it outside the purview of this particular bill.

If something is good for the goose, it ought to be good for the gander. But businesses do not want to come under this bill.

Where have the large damage verdicts occurred? The biggest one that we know about was Pennzoil versus Texaco, for $11 billion. It was not a product liability case, but a commercial case.

Go down the list and we will see most of the largest verdicts that have occurred relative to civil litigation are where businesses suing businesses. They do not attempt to take care of that in this bill. They do not want to be put under this bill.

The fact that they do not want to be put under this bill indicates that there are provisions that they do not want that could affect their lawsuits, when they suffer a loss, and when they sue a wrongdoer, to have to live with and to have to comply with.

When we stop and think, there are other aspects we should consider. The bill does exclude airlines for hire, but there are other aircraft that we ought to look at. Two planes crash in the air. Persons that are injured in those planes come under this proposed bill as to their damages. The airplane does not. One of the planes drops parts of its body down on Yankee Stadium and Yankee Stadium suffers a financial loss. The spectators are injured. They come under this bill; the owner of the Yankees for the loss of business profits, destruction to grandstands or to bleachers or what else might be, they do not come under it. What is good for the goose is good for the gander.

The bill talks about an ongoing business. I even got to thinking about it, and this may apply or may not apply, but if part of that airplane falls on a house of ill repute, if it is legitimate in a town—and there are States and towns where they are—then the ongoing business can recover for the loss of profits. That may be an extreme example, but it shows you how they have crafted this bill to take care of situations pertaining to commercial use, to business losses, yet the human elements of loss of limbs and of pain and suffering are restricted under this bill.

In the product liability bill during the 103d Congress, there was a provision for a defense against punitive damages where the FDA had given premarket approval to a drug or medical device. Last time there were several Senators who were very concerned about this provision, so this time the proponents left it out with the idea of picking up some votes. The House, on the other hand, left it in. They left in the FDA provision whereas statistics have shown, over a 10-year period 51.6 percent of all products that have been approved for the market by FDA have been recalled. But when this gets to conference, you can rest pretty well assured that the House provisions on that will control and be maintained.

This bill has a 20-year statute of repose. A statute of repose says that regardless of what happens, after 20 years of it being built—and where it says ''construct''—that thereafter, regardless of what was the reason, you cannot bring a lawsuit. You have a complete defense. This language of the bill is broad enough, in my judgment, with the use of the word ''construct'' to include a bridge, which if it collapses, will be subject to a statute of repose of 20 years. Yet the House bill has a statute of repose of only 15 years, and I think it will end up being 15 years.

You had the general aviation awhile back, where a bill was passed, agreement was worked out by most of the people involved here. They put in an 18-year statute of repose, which I think was a serious mistake since the figures show that 60 percent of the small planes in use were 20 years old or older. But, anyway, the House would even reduce that down further—20 years or 15 years. I mentioned a nuclear power plant, Chernobyl, and the pain and suffering that had incurred. Practically every nuclear powerplant in the United States today is at least 15 years of age. Most of them are older than 20 years.

Maybe it might not cover it. It uses the word ''construct'' and as I read the various language, I think it does. But regardless whether it does as a unit object as a whole, component parts in a nuclear powerplant which have been there for 20 years or longer, or 15 if the House prevails and I think they will. I am not sure, but it seems to me I read awhile back the last nuclear power plant that was started in construction was more than 20 years ago.

I think we do not realize the breadth of this bill and its effort to try to encompass all situations and what it will do.

I think there was testimony before the Commerce Committee on machine tools. The indications were that over 50 percent were at least 30 years old or older. Design conflicts, metal stress on airplanes and metal stress on airplanes that cause damages frequently, in the decision of the national safety investigation board—I do not remember the exact name—would indicate that metal stress on airplanes does not occur until after 15 or 20 years.

On the House side there are caps on noneconomic damages on drug companies, on pharmaceuticals. That cap is $250,000 on noneconomic damages, and there are provisions throughout on pharmaceuticals and drugs. This new section that was added, this biomaterials section, you first read it and it looks like raw materials. I was told that is like a fluid such as silicone that is in a breast implant, or the tissue that is sewed together in regards to making it, that gives them some immunity and protection against these suits.

But then you read further in that and it says ''component parts.'' I have a pacemaker. I do not know all the component parts. But, as I understand it, it has batteries and some computers and other component parts. There are wires that go down from that pacemaker, and its battery, into my ventricle—into the chambers of my heart. There are several component parts.

If it is defective, it would mean that for implants—and this biomaterial provision deals with implants—that an individual would practically have no way of recovering for defective products.

In pharmaceuticals, manufacturers are just almost given complete immunity in any suits. Drugs, and those implants I was mentioning a while ago, the silicone breast implant, the Copper IUD, and the Dalkon shield, as I understand it, are implants. So some people were worried about those as it would affect women for punitive damages. We ought to be concerned about this new section that they put in the bill on biomaterials.

The House bill abolishes joint and several liability for noneconomic damages as to all civil lawsuits. The House-passed bill, which again I think will prevail in conference, does not limit it to products but it says to all civil suits. I do not know who is responsible for the Oklahoma City bombing, but someone could bring a civil suit. I know in my home State that civil action was brought against the Ku Klux Klan and really did a great deal to stop the Ku Klux Klan through that civil lawsuit because the Klan had some land and other assets that were collectible. In the Oklahoma City situation, in the Alfred Murrah Building, if there were four people that were involved in it and a court would have to determine the part that each played relative to a conspiracy. But what if one of the conspirators happens to inherit 5,000 acres of land or has other assets, and it is determined that he is the one with the most knowledge, it may be that a plaintiff could not collect damages.

The present law is let the parties themselves determine among themselves the apportionment of the damage rather than having the plaintiff responsible relative to the apportionment of damages and the determination on each and every individual case. I think they have worked it out over the years.

There are some States that have contributions from joint tort feasors. There are others that do not. But as a general rule, it has been worked out in a manner where it is not a difficult situation that has caused any tremendous injustice among the defendants to apportion that responsibility.

We mention caps on punitive damages, and the House has caps on noneconomic damages on drug companies, pharmaceuticals. The language is that it is a cap of $250,000, or three times the economic loss. How does that apply? Let us take an example. We have a 55-year-old CEO of a company. He has 10 years of work expectancy say, and at 65 he would retire. He makes $5 million a year. So you take $5 million, multiply it by the annuity tables, which would we will say 10 years is what he would have. You have $50 million that would be then a part of his cap. You then multiply it by three. He would have a $150 million cap on punitive damage, or on the matter of the cap on noneconomic damages that the House has on drugs.

Then we compare the $150 million, which takes care of the wealthy, to the housewife. She has no economic loss because she does not work outside the home. So the housewife has a cap of $250,000, as opposed to $150 million for the CEO. The 65- or 70-year-old retired person has no economic loss, and he is not working. Mr. President, $250,000 is the cap. The CEO 55 years of age is capped at $150 million. And you can go on down the list of the inequities. The provisions as it would apply on factual situations shock your conscience.

There is a provision that allows you to collect workers compensation. Perhaps you collect under the workman's compensation, $40,000 or $30,000. You get your medical bills paid and other expenses. They are subrogated. That means, if a claimant recovers against a third-party wrongdoer, the insurer is entitled to get its workman's compensation insurance back. But this bill has the language that a claimant cannot settle his lawsuit without that workman's compensation insurer's permission. You have to have the permission of the insurer to settle, unless that workman's compensation insurer is paid in full. You come to the point that, well, I do not want to gamble. The case is probably worth $500,000. Maybe if somebody does not want to go through a lawsuit so they say, ''Well, I will settle my damages for basically about two-thirds on the dollar. But the workman's compensation company says, ''No. I want 100 percent on the dollar,'' and this is shocking to one's conscience.

I also remind you that we have an exemption under antitrust laws for insurance companies, and they can get together and in effect reach some sort of an agreement. There is also the situation that it could well be that they are the same insurance company for the employer as well as the manufacturer. Therefore, they are bargaining for a cheaper figure, putting a claimant in a disadvantageous situation.

There are all sorts of factual situations that can arise which show this question is which really shocks your mind to consider from a viewpoint of what is right and wrong and gives them a hammer over a claimant's head.

Shocking your conscience further, there is a provision in this bill that says that if you sue for punitive damages, then either party, the plaintiff or defendant or any of the defendants, has a right to have a separate trial on the issue of punitive damages as opposed to the trial in chief in which compensatory damages are sought. This bill provides for bifurcated, separate trial.

Then the language of this bill provides that you cannot prove the elements of culpability, the fault, the evidence of punitive damages in the compensatory damage lawsuit.

So you have evidence of a drunk chemist that was involved with a company making a drug. That evidence would go to punitive damages, but it could not be introduced in the compensatory damage lawsuit. I think that shocks your conscience.

Consider the example of where a person is intoxicated. The bill has a provision which gives a complete bar to recover if the intoxication of the plaintiff amounted to 50 percent of the causation and the damages. On the other hand, if a punitive damage case was brought under this bill, the drunkenness or the alcoholic activity of the chemist or whoever the actor might be that was involved in the production of the product could not be shown in the compensatory damage lawsuit. You would have to show it only in the punitive damage part of the lawsuit.

Now, this bill does not have the loser pay in regard to the attorney's fee. But when it comes out of conference, I think you better be extremely watchful as to whether the conference report will contain such a provision.

I think it is important that we look at this bill carefully. I pointed out some of the provisions, and every time I read the bill I see more and more fine print, methods by which there is an advantage that is sought for manufacturers. I have not had the time to review this yet, but in the punitive damage aspect of it, they have changed the language where it was generally accepted throughout as either willful or wanton or gross negligence depending on the State standards. It uses the words ''conscious, flagrant indifference to the safety of others,'' and so on. I am interested in seeing where that language came from and the reason.

I do not in my recollection remember the use of conscious, but I remember that under certain circumstances—and I am hazy on this, and I have asked staff to do some research, to contact a tort professor at a university pertaining to this—there seems to me to be a body of law that for a corporation to be conscious, it requires activity on the part of the board of directors. I am vague on that, and I do not want to make a statement because I am not sure as to that. But that is something that is troubling and something that I wish to look at further and perhaps say something else at a later time. But these words are new words. And, of course, they would be interpreted by the courts as they come along, and there may be basic case law in regards to it at the present time that has given some type of interpretation which means that there is an existing precedent. It may not have to be followed from one State to another.

But that brings up the interpretation which to me is just entirely inconsistent by the original motivation that brought forth the idea of some federalized tort law. That was the concept that we live in a world in which interstate commerce goes from one State to the other and products are sold and everything else. Therefore, we need a uniform Federal products liability.

Well, this is far from being uniform. First, it only preempts the State laws in the specific matters that are listed within the bill. The interpretation that is given is placed upon the State court system and in diversity cases on the circuit court of appeals. Under the original bill that they proposed, they had the State courts reviewing this as well as the territories. You could have had 55 different interpretations of law and of with little uniformity in that regard.

The proponents made a change somewhat in that whereby it says that the 11 Federal circuit courts will be involved in interpretations. So you have got all of at least 11 circuits that could have different interpretations, and you could have conflicts of law. They made a change which says basically does away with the concept of the old line of cases of Erie which say that the Federal courts shall follow the State law and they say now the State laws pertaining to interpretation of this shall follow each circuit, but instead of uniformity you can still have at least—well, it would take, in my judgment, 20 to 25 years before you would finally get the matter to the Supreme Court, and you would have uniform interpretation of a particular language or particular provision. It is devoid of uniformity. There is no uniformity except for the few instances in which they preempt in this, and the ones they preempt are in effect the guts of a civil lawsuit. But you have a situation where you do not have uniformity relative to the motivation that many businesses argued for relative to that. So there is no uniformity that is involved here.

There has been this lawsuit about McDonald's and the woman with the cup of coffee, and there is an article by Roger Simon in the Baltimore Sun on February 22, 1995. He says:

Forget about the millions won by suehappy lawyers.

Just about everybody knows about the woman who spilled a cup of coffee on herself and sued McDonald's because it was too hot.

Just about everybody knows the jury awarded her millions of dollars and this is what is wrong with America.

It is so wrong, in fact, that the Republican ''Contract With America'' has promised to fix it and hearings are now under way before Congress to make it much harder for consumers to sue for large amounts of money.

But the real story of what happened to that much-maligned woman tells us something else about America.

Stella Liebeck was 79 years old in 1992 and sitting in her grandson's car when she bought a 49-cent cup of coffee at a McDonald's drive-through window in Albuquerque, N.M.

The car was stationary when she lifted the lid to put in cream and sugar, but she spilled the coffee on her lap.

She received third-degree burns on her groin, thighs, and buttocks. She was hospitalized for 8 days and underwent skin grafts. According to her lawyer, she was disabled for more than 2 years. Her hospital bills were in excess of $10,000.

McDonald's offered the woman $800 to settle, and she had a $10,000 hospital bill.

She sued.

At trial, Liebeck's attorney, S. Reed Morgan of Houston, told the jury that McDonald's serves its coffee between 180 and 190 degrees, which, he argued, is 40 degrees hotter than most food establishments. McDonald's says coffee tastes better at the higher temperature.

Morgan presented an array of expert witnesses who testified that serving coffee at such a high temperature presents an unacceptable risk to consumers.

The jurors also learned that between 1982 and 1992, more than 700 claims had been filed against McDonald's for coffee burns and that McDonald's had settled claims for more than $500,000.

After a 6-day trial, the jury awarded Mrs. Liebeck $200,000 in compensatory damages for her injuries, but reduced that by 20 percent because the jury felt the spill was 20 percent her fault.

Then the jury awarded her $2.7 million in punitive damages, a figure it did not pick out of a hat.

Having been told during the trial that McDonald's sold $1.35 million worth of coffee per day, the jurors assessed McDonald's a fine equal to 2 days of gross coffee sales.

The trial judge, however, reduced the amount of punitive damages to $480,000 or triple Mrs. Liebeck's actual damages.

Both sides could have appealed, but it was now 1994. Mrs. Liebeck was 81, and her lawyer felt McDonald's was hoping she would die before the case was concluded.

So he negotiated a settlement with McDonald's. He is not allowed to say for how much, but let's say it was roughly $500,000.

Mrs. Liebeck's attorney would get one-third of that amount and the expert witnesses, who can cost tens of thousands of dollars, would be paid out of Mrs. Liebeck's share.

So Mrs. Liebeck did not become a millionaire or anything close to it. Which is typical of such cases.

''I have been an attorney for 20 years and I have received two awards for punitive damages in all that time''—

The lawyer Morgan told Roger Simon.

in a telephone interview * * *. ''And you know how many times I have gotten full punitive damages as the jury intended? Never.''

An American Bar Association study of over 25,000 jury awards between 1981 and 1985 found that the median punitive damage award was only $30,000. According to a U.S. News & World Report, the current average award in personal injury cases is $48,000.

And, contrary to claims that there has been an explosion of personal injury lawsuits, the number of such suits have been dropping since 1990.

It is important to keep in mind, however, that punitive damages are supposed to serve a purpose.

''It's all economics,'' Mr. Morgan said. ''If some companies can make more money injuring you with a bad product than keeping you safe with a good one, they will injure you. I am not saying all companies; I am saying some companies.''

In other words, the fear of being socked with large punitive damages is all that keeps some companies from doing us harm.

So why should we ''reform'' away our ability to hit them where it hurts?

I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HEFLIN. Mr. President, there are many other aspects, and I will speak further in regard to it but, at this time, I yield the floor.

EXHIBIT 1

FORGET ABOUT THE MILLIONS WON BY SUE-HAPPY LAWYERS

(By Roger Simon)

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McDonald's offered Mrs. Liebeck $800. She sued.

At trial, Liebeck's attorney, S. Reed Morgan of Houston, told the jury that McDonald's serves its coffee at between 180 and 190 degrees, which, he argued, is more than 40 degrees hotter than most food establishments. McDonald's says coffee tastes better at the higher temperature. (McDonald's declined to be interviewed for this column.)

Morgan presented an array of expert witness who testified that serving coffee at such a high temperature presents an unacceptable risk to consumers.

The jurors also learned that between 1982 and 1992 more than 700 claims had been filed against McDonald's for coffee burns and that McDonald's had settled claims for more than $500,000.

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So Mrs. Liebeck did not become a millionaire or anything close to it. Which is typical of such cases.

''I have been an attorney for 20 years and I have received two awards for punitive damages in all that time.'' Morgan told me in a telephone interview yesterday. ''And you know how many times I have gotten full punitive damages as the jury intended? Never.''

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In other words, the fear of being socked with large punitive damages is all that keeps some companies from doing us harm.

So why should we ''reform'' away our ability to hit them where it hurts?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, I have been waiting my turn to comment on the observations of my distinguished colleague from Washington. I have been waiting with anticipation.

The distinguished author and manager of the bill, the Senator from Washington, said, as best I can remember that here in the Senate, if we seek to accomplish a certain goal, we should do it absolutely. It is very, very curious to me, if we seek to accomplish a certain goal, we should do it absolutely.

Now if what is attempted is uniformity, then why not require uniformity? It is not about whether it is an absolute or a balanced measured, or any forensic approach. It is a matter of law and what is provided. We go right to the idea of uniformity and its inconsistency with respect to the States.

Very interestingly, Mr. President, this bill—which I have a copy of—starts off, if we look at the front page of S. 565, as ''A bill to regulate interstate commerce by providing for a uniform product liability law.''

Well, they got into that pollster nonsense that I was talking about earlier. They do not want to call it a uniform law, rather they now want to focus on fairness. The buzzword now is everything has to be ''fair.'' I do not know who it is going to be fair to. They say here that ''This act may be cited as the Product Liability Fairness Act.'' However, what they ought to call it is the ''Product Liability Generosity Act to Manufacturers of 1995.'' Very, very generous to the manufacturers.

Now let us go to the matter of punitive damages. Let us look at S. 687, the 1993 bill, at page 22. S. 687, page 22, says in the proof of punitive damages:

> In determining the amount of punitive damages, the trier of fact shall consider all relevant evidence, one, the financial condition of the manufacturer of product seller; two, the severity of the harm caused by the manufacture of product seller; three, the duration of the conduct or any concealment of it by the manufacturer or product seller; four, the profitability of the conduct to the manufacturer or product seller; five, the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant.

These are the elements that you have, generally, at the State court level on the proof of punitive damages, so it is not just a runaway jury. Many times I have heard—and the distinguished Presiding Officer has tried these cases—a judge turn and say there is going to be a fine to make sure they do not engage in this reckless course of conduct again. And in determining whether there is going to be punitive damages, it's important to look at the worth of the organization and whether or not it is a customary violation, the duration of the conduct or concealment of it and all of these elements.

Now look at the matter with respect to this particular bill, S. 565, on punitive damages. They do not list those things at all. It says here at the bottom of page 47: ''Proceeding with respect to punitive damages.'' Line 24: ''Evidence that is admissible in the separate proceeding under paragraph 1—(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and (ii) shall not include evidence of the overall assets of the defendant.''

That is all. They don't spell out what you can look at in this bill, Mr. President. You can consider evidence of the profits from the wrongdoing, but not any evidence whatsoever of the overall assets, or the nature or the duration of the conduct, or concealment of the manufacturer, or the number of products sold, or the financial condition of the manufacturer. In fact, they say: ''Shall not include evidence of the overall assets of the defendant.''

In the *Exxon Valdez* case, how do you think Exxon Corp. profited from running into the ground? There would not be any profit there. I could go through the list of different manufacturers' cases. I refer to the matter of the illusory part position on the Ford automobile, whereby the users of Ford cars between 1970 and 1979 thought that when they had a car in the park position, it was giving the operator the impression that the car was secured. Of course, it was the slamming of the car door or vibration caused the car to move in reverse. We have one case here, and several others, about a car that backed up into a particular individual that was walking by the rear of the automobile and was run down, and they gave $4 million in punitive damages.

Under this particular test against Ford, if you put this into law, I do not see where Ford gained an advantage or made profits—if they could call it profits—from the misconduct that caused the injury to the pedestrian that the car all of a sudden backed into. Of course, Ford Motor Co. could change the thing. When they got the punitive damages, they understood and changed the park position in the gear of the Ford automobile.

But to come now, and rather than list commonsense provisions that they had in the 1993 and 1991 bills and everything else, they put these kinds of restrictive provisions in, and then claim it is a fairer bill. I go right to the punitive caps there on page 47. They have in the bill what purports to be uniform standards for punitive damages. But when get beneath the cover, Mr. President, you discover the real deal. That is, if you have punitive damages in your State, it's preempted. But if in a State that does not provide for punitive damages, you are not given the benefit of uniformity. The Senator from Washington does not want uniformity for the State of Washington since they do not have punitive damages, but, yet, he is talking about uniformity. Of course, it is all uniformity so long as it is advantages, so to speak, for the manufacturer, but not the injured party. So this does not provide for punitive damages in all States and for all citizens, even though the so-called goal of the bill is uniformity. In this particular bill, he said, even though we want uniformity, if you do not have punitive damages, no way, you still do not get them. On the other hand, even if you were injured, you cannot exceed $250,000 or three times the economic loss which, in many instances, is a lot less than the $250,000 cap. So you do not teach the lesson there.

With respect to a more reasonable bill, again, you have the matter of misuse on page 44. Regarding the previous bills, they are talking about how reasonable they have gotten now. ''Reduction for misuse for alteration of the product.'' This provision was not in the three previous bills. The statute of repose, as has already been pointed out, for no good reason, has been reduced now to 20 years. So pass this, with the House at 15 years, it is going to be reconciled downward.

The liability shield for component parts manufacturers was not in the three previous bills. As the distinguished Senator from Alabama, having a heart beeper in his own body, which is obviously comprised of component parts, said wait a minute, if this thing is defective, do not give me this particular bill or I am a definite loser. There will be no recovery there.

On the morning of the markup, they added this rental car provision to exempt rental car companies from liability. If you get a rental car and you run into somebody, the rental car owner is not responsible. But if you borrow my car, and run into somebody, I am still responsible. They have many more severe provisions, if you read down, as we have in covering this particular measure. The fact of the matter is that this bill is not intended to be more reasonable but rather more restrictive on those seeking recovery for their particular injury.

And I want to go here to the uniformity part where it does not apply to the manufacturer, and they talk now about the Uniform Commercial Code.

Mr. President, I ask unanimous consent at this particular point—it is not that long—to have printed in the RECORD an overview of the Uniform Commercial Code.

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

THE UNIFORM COMMERCIAL CODE—AN INTRODUCTION

1. NATURE AND ORIGINS

As of 1988, one of three different Official Texts of the Uniform Commercial Code was in force in each of the American states except Louisiana, as well as the District of Columbia and the Virgin Islands. The 1962 Official Text (or a predecessor with minor variations) was in force in 3 states. The 1972 Official Text was in force in 14 states. The 1978 Official Text was in force in 32 states. Unless otherwise indicated, all references in this book are to the 1978 Official Text of the Code. The Code is law in these jurisdictions by virtue of ''local,'' state by state, enactment. The United States Congress did not enact the Code as general federal statutory law, although it did enact the Code for the District of Columbia. The 1978 Code is divided into eleven articles as follows:

Article 1. General Provisions.
Article 2. Sales.
Article 3. Commercial Paper.
Article 4. Bank Deposits and Collections.
Article 5. Letters of Credit.
Article 6. Bulk Transfers.
Article 7. Warehouse Receipts, Bills of Lading and Other Documents of Title.
Article 8. Investment Securities.
Article 9. Secured Transactions; Sales of Accounts and Chattel Paper.
Article 10. Effective Date and Repealer.

Article 11. Effective Date and Transition Provisions.

In all but Articles Ten and Eleven, the Articles are subdivided into ''Parts.'' Thus, in Article One there are two ''Parts'' while in Article Two there are seven. Each Part is in turn subdivided into ''sections.'' Sections are numbered in a manner that indicates both Article and Part. Thus, section 2–206 on ''Offer and Acceptance in Formation of Contract'' is in Article Two, Part Two. The first number of a section always indicates the Article and the second number the Part within that Article in which the section appears. The Official Text of The Code includes ''Official Comments'' on each section. The enacting jurisdictions did not enact these comments, although they did enact both the section headings and the sections (except insofar as they amended the Official Text, a topic which will be considered below.) The various jurisdictions, on enacting the Code, generally followed the arrangement and sequence of the Official Text. In almost all instances, they also preserved the Code's numbering system. For example, in the great State of Oregon, a seven appears before the first digit in the Code's numbering system and a zero after the last digit. Otherwise, the Code's numbering system is left intact. Thus, in Oregon, 1–101 is 71–1010.

The National Conference of Commissioners on Uniform State Laws was the originating sponsor of the Code. This was hardly the first venture of the Conference into the field of commercial law reform. The Conference had earlier sponsored a number of ''uniform acts'' in this field. Those acts that were adopted in one or more jurisdictions are listed below, with dates of promulgation.

Uniform Negotiable Instruments Law, 1896.
Uniform Warehouse Receipts Act, 1906.
Uniform Sales Act, 1906.
Uniform Bills of Lading Act, 1909.
Uniform Stock Transfer Act, 1909.
Uniform Conditional Sales Act, 1918.
Uniform Trust Receipts Act, 1933.

All states adopted the Uniform Negotiable Instruments Law and the Uniform Warehouse Receipts Act. Roughly two-thirds of the states adopted the Uniform Sales Act and the Uniform Trust Receipts Act. The other acts were less well received.

By the late 1930's, the foregoing uniform acts had become outdated. Changes had occurred in the patterns of commercial activity prevalent when the acts were promulgated. Also, wholly new patterns had emerged which gave rise to new kinds of legal needs. Moreover, a major objective of the uniform acts had been to promote uniformity. But not all states enacted the acts, and the courts of the states rendered countless nonuniform ''judicial amendments.'' By 1940, there was growing interest in large scale commercial law reform. The Conference was already at work revising the old Uniform Sales Act and was giving consideration to a revision of the Uniform Negotiable Instruments Law.

In 1940, Mr. William A. Schnader conceived the idea of a comprehensive commercial code that would modernize and displace the old uniform acts. That same year, with the support and advice of Professor Karl N. Llewellyn, Mr. Schnader, as President of the National Conference of Commissioners on Uniform State Laws, persuaded the Conference to adopt a proposal to prepare a comprehensive code. Shortly thereafter, Schnader and others sought the co-sponsorship of the American Law Institute. Initially, the Institute agreed only to co-sponsor a revision of the old Uniform Sales Act, but on December 1, 1944 the two organizations formally agreed to co-sponsor a Uniform Commercial Code project, with Professor Karl N. Llewellyn of the Columbia Law School as its ''Chief Reporter'' and Soia Mentschikoff as Associate Chief Reporter. The co-sponsors also set up a supervisory Editorial Board of five members which was later enlarged. Professor Llewellyn then chose various individuals to serve as principal drafters of the main Code Articles:

Article 1. Karl N. Llewellyn.
Article 2. Karl N. Llewellyn.
Article 3. William L. Prosser.
Article 4. Fairfax Leary, Jr.
Article 5. Friedrich Kessler.
Article 6. Charles Bunn.
Article 7. Louis B. Schwartz.
Article 8. Soia Mentschikoff.
Article 9. Allison Dunham and Grant Gilmore.

Between 1944 and 1950, the foregoing team formulated (not without extensive consultation) the first complete draft of the Code. The co-sponsors then circulated this draft widely for comment. After revision, the co-sponsors promulgated the first Official Text of the Code in September 1951 and published it as the ''1952 Official Text.'' In 1953, Pennsylvania became the first state to enact the Code, effective July 1, 1954. In February of 1953, the New York State Legislature and Governor Thomas E. Dewey referred the Code to the New York State Law Revision Commission (located at the Cornell Law School) for study and recommendations. Between 1953 and 1955, the Commission dropped all other work to study the Code. In the end, the Commission concluded that the Code idea was a good one but that New York should not enact the Code without extensive revision. Meanwhile, the Code's Editorial Board had been studying the Commission's work (as well as proposals for revision from other sources) and in 1956 the Board recommended many changes in the 1952 Official Text. In 1957, the co-sponsors promulgated a 1957 Official Text that embodied numerous changes, many of which were based on the Commission's study. Another Official Text was promulgated in 1958, and still another in 1962. The latter two made relatively minor changes in the 1957 Official Text.

Meanwhile, Massachusetts became the second state to enact some version of the Code in September 1957. By 1960, Kentucky, Connecticut, New Hampshire, and Rhode Island had followed suit. In 1961, eight more states joined the fold. In 1962, there were four more, including New York. In 1963, there were eleven more enacting states, in 1964 one, in 1965 thirteen, and in 1966 five more. By 1968, the Code was effective in forty-nine states, the District of Columbia, and the Virgin Islands. Louisiana is the only state not to have adopted the entire Code. In 1974, however, that state did enact Articles 1, 3, 4, 5, 7 and 8 of the 1972 Official Text, with amendments.

In 1961, the Code sponsors set up a Permanent Editorial Board for the Code which continues in operation to this day. After its first written report on October 31, 1962, the Board made three further reports. During the 1960's and early 1970's, the Board was concerned mainly with two tasks: (1) promoting uniformity in state by state enactment and interpretation of the Code and (2) evaluating and preparing proposals for revision of the 1962 Official Text. For example, the Board devoted great energy to revision of Article Nine on personal property security. Eventually, the American Law Institute and the National Conference of Commissioners on Uniform State Laws approved a revised Article Nine which West Publishing Co. published in 1972 as part of a new 1972 Official Text of the entire Code (incorporating all officially approved amendments thereto).

In the mid and late 1970's the Code sponsors and others studied possible revisions of Article Eight on investment securities. A committee called the 348 Committee of the Permanent Editorial Board reviewed proposals and made recommendations to the Board. Eventually, the Code sponsors adopted a revised Article Eight and in 1978 promulgated a new Official Text embodying these revisions. As of January 1, 1988, thirty-two states had adopted most of this Official Text.[22]

No one has published an authentic ''inside'' story of the evolution of the Code. Judged by its reception in the enacting legislatures, the code is the most spectacular success story in the history of American law. We know that the design and text of the Code bears the inimitable imprint of its chief draftsman, Karl N. Llewellyn, and that his spouse, Soia Mentschikoff, had a major hand in the entire project. We know, too, that many individuals whose names have not appeared so prominently as draftsmen or as reporters had great influence on aspects of the final product. One example is Professor Rudolf B. Schlesinger of the Cornell Law School who was not only responsible for the idea of a Permanent Editorial Board,[24] but also provided most of the ideas for the radical revision of Article Five on letters of credit that appeared in the 1957 Official Text. Another example is the extensive work of the late Professor Robert Braucher of the Harvard Law School (subsequently Mr. Justice Braucher of the Massachusetts Judicial Court). His efforts began in the 1940's and continued until his death in 1981. We know, too, that politically and in other ways, William A. Schnader of the Philadelphia Bar was the Code's prime mover. It seems safe to say that without his efforts, the Code would not have come into being. Llewellyn and Schnader are now dead (deceased 1962 and 1969 respectively), a fact that imposes a real handicap on anyone who seeks to prepare an authentic history of the Code project. A British scholar, Professor William Twining, has catalogued Llewellyn's papers at the University of Chicago Law School, and any future history of the Code project must take account of these papers.

2. COMMERCIAL LAW NOT COVERED; FREEDOM OF CONTRACT

The Uniform Commercial Code does not apply to the sale of realty nor to security interests in realty (except fixtures), yet these are undeniably commercial matters. The Code does not apply to the formation, performance, and enforcement of insurance contracts. It does not apply to suretyship transactions (except where the surety is a party to a negotiable instrument). It does not govern bankruptcy. It does not define legal tender. It is not a comprehensive codification of commercial law.

The Code does not even cover all aspects of transactions to which its provision do apply. For example, it includes several innovative provisions on the formation of sales contracts, but it still leaves most issues of contract formation to general contract law. To cite one more example, the code includes provisions on the purchaser's title to goods, but one of these provisions turns on the distinction between void and voidable title, a distinction that requires courts to invoke non-Code law. Section 1–103 is probably the most important single provision in the Code, and will be discussed in section five of this Introduction. The provision reads:

''Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.''

As Professor Grant Gilmore once put it, the Code ''derives from the common law

[and] assumes the continuing existence of a large body of pre-Code and non-Code law on which it rests for support, [without which the Code] could not survive.'' Much of the pre-Code and non-Code law to which Professor Gilmore refers is case law from such fields as contracts, agency, and property, which comes into play via 1–103.

Of course, federal commercial law overrides the Code. The Federal Bills of Lading Act is illustrative. So, too, is the Carmack Amendment to the Interstate Commerce Act. Federal regulatory law overrides the Code, too. Today there are federal statutes such as the National Consumer Credit Protection Act, and the Magnuson-Moss-Warranty-Federal Trade Commission Improvement Act regulating aspects of consumer warranty practices. Similarly, state regulatory statutes also override the Code. Thus, there are state retail installment sales acts, state usury laws, state laws on consumer credit, and so on. The Code itself includes a few regulatory provisions.

Finally, most of the Code's provisions are not mandatory. The parties may vary their effect or displace them altogether: freedom of contract is the rule rather than the exception. Most commercial law is therefore not in the Code at all but in private agreements, including course of dealing, usage of trade, and course of performance.

3. VARIATIONS IN ENACTMENT AND IN INTERPRETATION; CONFLICT OF LAWS RULES

The Uniform Commercial Code is not uniform. As early as 1967, the various jurisdictions enacting the Code had made approximately 775 separate amendments to it. Article Nine on security interests in personal property was the chief victim of the nonuniform amendments. As of December 15, 1966, 47 of the 54 sections in the Article had been amended; California, in particular, liberally rewrote or deleted segments of it. The new Article Nine, embodied in the 1972 and 1978 Official Texts, had become law in forty-six states (including California) by January 1, 1987. Article Six on bulk transfers was also the subject of many nonuniform amendments. New York amended Article Five in a way that renders it inapplicable to many letter of credit transactions, and yet New York does more letter of credit business than any other state.

Another source of nonuniformity lies in the various ''optional'' provisions in the Official Texts of the Code. Thus, for example, Section 9–401 offers enacting states three alternatives with respect to the place of filing of financial statements. Section 7–403(1)(b) offers two versions of the burden of proving the bailee's negligence. Section 6–106 imposes a duty on the bulk transferee to see that the transferor's creditors are paid off, but it is wholly optional. Section 2–318 includes three options on third party beneficiaries of warranties. And the Code includes still other optional provisions. In almost every instance, some states have adopted one version while other states have adopted another.

So-called ''open-ended' drafting is another source of nonuniformity. In Articles Two and Nine, the draftsmen used such phrases as ''commercial reasonableness'' and ''good faith.'' That different courts will give such phrases different meanings should surprise no one. And, after any uniform law has been on the books for very long, disparate judicial interpretation and construction of even quite detailed provisions become another source of nonuniformity. Today, many Code sections have been the subject of judicial interpretation and construction in more than one jurisdiction and the courts disagree over the meaning of many sections.

The foregoing sources of nonuniformity signify that the Code's conflict of laws rules are becoming especially important. Section 1–105 sets forth the basic Code provisions.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2–402.

Applicability of the Article on Bank Deposits and Collections. Section 4–102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6–102.

Applicability of the Article on Investment Securities. Section 8–106.

Perfection Provisions of the Article on Secured Transactions. Section 9–103.

Various scholars of conflict of laws have offered their thoughts on 1–105, and we have collected some of their writings in the footnote. Later in this book we also address ourselves to specify conflicts problems in the context in which they arise.

4. AIDS TO INTERPRETATION AND CONSTRUCTION

The principal aids to interpretation and construction of the Code are these:

Case law.

Prior drafts and prior official texts.

Other legislative history—New York Law Revision Commission Reports—State legislative hearings and committee reports.

Official Comments to each section.

Periodic Reports of the Permanent Editorial Board.

Treatises and other secondary sources.

Rules of interpretation and construction.

Standard interpretation technique.

Mr. HOLLINGS. Mr. President, I will read the very first line:

As of 1988, one of the three different Official Texts of the Uniform Commercial Code was in force in each of the American States except Louisiana. . . . The United States Congress did not enact the code as general Federal statutory law.

It is talking of the nature and origins. Then it goes on to point out that what we have under the code is a selective process. It says here in the section two, titled ''Commercial Law Not Covered; Freedom of Contract'':

Finally, most of the Code's provisions are not mandatory. . . . Most commercial law is therefore not in the Code at all but in private agreements, including course of dealing, usage of trade, and course of performance.

The Uniform Commercial Code is not uniform. Now that is the manufacturers.

I ask unanimous consent to have printed in the RECORD a particular law review article on the conflict of laws under the Uniform Commercial Code at this point.

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

[From the Arkansas Law Review]

CONFLICT OF LAWS UNDER THE U.C.C.

(By Robert A. Leflar)

When do conflict of laws problems arise under the Uniform Commercial Code, now that it is law in all the states and other subdivisions of the United States except Louisiana?

Conflicts do still occur. Obviously they can occur when part of a commercial transaction takes place in Louisiana or in a foreign nation whose law differs from the Code. But they occur more frequently between the laws of states that have adopted the Code. Why? Because (1) several states have enacted variant amendments to some sections of the Code, and (2) the courts of a number of states, careless of the function of uniformity in a uniform act, have given nonuniform interpretations to some sections of the Code. Conflicts are not now as inevitable as in the 1950's and early 1960's, when only a few states had enacted the Code, but they can be even more frustrating than they were then. The answers to the conflicts problems, however, are reasonably definite.

The history of choice-of-law provisions in the Code is, in a very real sense, a pre-outline of the more recent history of American conflicts law generally. It is a history of increased emphasis upon substance over form and of deliberate preference for an approach that would result in application of better, sounder rules of commercial law as distinguished from mechanical choice-of-law rules applied for their own sake. The approach is primarily designed by commercial law specialists whose concern was with what they conceived to be good commercial law, rather than by conflicts scholars. Most conflicts scholars, however, ultimately agreed with the approach.

Joe C. Barrett of Arkansas was one of the practical lawyer-Commissioners whose interests lay in the substantive law areas, not in choice-of-law theory. His voice was an influential one almost from the beginning of work on the Code, and he agreed with the pragmatic approach to conflicts issues. Though he left it to others, for the most part, to frame the conflicts language, he supported their ideas, particularly as the sections were reviewed by the Permanent Editorial Board of which he was a longtime member. He had much to do with the thinking and rethinking that is reflected in the successive drafts as they are presented in the next few pages. Above all, he was satisfied by section I–105 as it finally emerged, first in the 1958 Official Text, then with one further change in 1972. The section as it now stands is as follows:

SECTION 1–105. TERRITORIAL APPLICATION OF THE ACT; PARTIES' POWER TO CHOOSE APPLICABLE LAW

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of the Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2–402.

Applicability of the Article on Bank Deposits and Collections. Section 4–102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6–102.

Applicability of the Article Investment Securities. Section * * *.

Perfection provisions of the Article on Secured Transactions. Section 9–103.

The first 25 years

From the beginning the effort was to make the new Code applicable to as many transactions as could constitutionally be brought under it. The due process clause of the federal Constitution, and possibly the full faith and credit clause, set the outer limits. The leading case was (and is) *Home Insurance Co. v. Dick*, which held that due process was violated by a state's holding a transaction to be governed by the substantive law of a state which had no substantial connection with the transaction.

The October, 1949 draft of section 1–105 attempted to achieve the desired maximum application of the new Code by providing that this Act shall apply to any contract or transaction within its terms if:

(a) the contract is completed, or the offer made or accepted, or the transaction occurs within this state; or

(b) the contract is to be performed or the transaction is to be completed within this state; or

(c) the contract or transaction relates to or involves goods which are to be or are in fact located, delivered, shipped or received within this state; or

(d) the contract or transaction involves a bill of lading, warehouse receipt or other document of title which is to be or is in fact issued, delivered, sent or received within this state; or

(e) the contract or transaction involves commercial paper which is made, drawn, transferred or payable within this state; or

(f) the contract or transaction involves a commercial credit made, sent or received within this state; or involves a commercial credit issued in this state or confirmation or advice of which is sent or received within this state, or involves any negotiation within this state of a draft drawn under a credit; or

(g) the contract or transaction involves a foreign remittance drawn, transferred or payable within this state; or

(h) the contract or transaction involves an investment security issued or transferred within this state; or

(i) the contract or transaction involves a security interest created within this state or relating to tangible personal property which is or is to be actually within this state or to intangible personal property which has or is to have its situs within this state; or involves a bulk transfer of property to the extent that such property is within this state; or if the borrower's principal place of business is within this state; or

(j) whenever the contract, instrument or document states in terms or in substance that it is subject to the Uniform Commercial Code.

(2) Notwithstanding the provisions of the foregoing subsection, the parties to a contract or transaction involving foreign trade may agree in writing that the law of a specified jurisdiction shall apply.

The objective had been to list all the factual connections that were substantial enough to permit forum law (the Code) to be constitutionally applicable.

At the same time an alternative section 1–105 was drafted, for inclusion in a proposed enactment of the Code by the federal Congress, on the supposed authority of the commerce clause. This draft generally tracked the language of the state section.

The reaction to this section came near to being violent. A part of the reaction was automatic resistance to change: ''If it's different from what I learned in law school it must be wrong.'' A number of conflicts scholars joined in unanimous adoption of a resolution introduced by the respected Professor Elliott E. Cheatham of Columbia University Law School:

''Resolved, that the undersigned, participants in the 1949 Institute of International and Comparative Law, Ann Arbor, Michigan, are of the opinion that Section 1–105 (in both forms) of the May, 1949, draft of the Uniform Commercial Code, dealing with conflict of laws, is unwise and should be omitted from the Code; and the Executive Secretary of the Institute of International and Comparative Law is requested to transmit a copy of this resolution to the President of the American Law Institute and the Chairman of the Commissioners on Uniform Laws.''

This reaction induced the Institute and the Commissioners to revise the section by lengthening it considerably, deleting the alternative proposed for federal enactment, but retaining the same objective that the Act, as a state statute, apply to as many transactions as the Constitution would permit. The 1952 draft of the section, instead of providing that ''this Act'' shall apply to all the enumerated situations, called for application of particular parts (articles) of the Act to the fact situations:

SECTION 1–105. APPLICABILITY OF THE ACT; PARTIES' RIGHT TO CHOOSE APPLICABLE LAW.

(1) Article 1 applies to any contract or transaction to which any other Article of this Act applies.

(2) The Articles on Sales (Article 2), Documentary Letters of Credit (Article 5) and Documents of Title (Article 7) apply whenever any contract or transaction within the terms of any one of the Articles is made or occurs after the effective date of this Act and the contract

(a) is made, offered or accepted or the transaction occurs within this state; or

(b) is to be performed or completed wholly or in part within this state; or

(c) relates to or involves goods which are to be or are in fact delivered, shipped or received within this state; or

(d) involves a bill of lading, warehouse receipt or other document of title which is to be or in fact issued, delivered, sent or received within this state; or

(e) is an application or agreement for a credit made, sent or received within this state, or involves a credit issued in this state or under which drafts are to be presented in this state or confirmation or advice of which is sent or received within this state, or involves any negotiation within this state of a draft drawn under a credit.

(3) The Articles on Commercial Paper (Article 3) and Bank Deposits and Collections (Article 4) apply whenever any contract or transaction within the terms of either of the Articles is made or occurs after the effective date of this Act and the contract

(a) is made, offered or accepted or the transaction occurs within this state; or

(b) is to be performed or completed wholly or in part within this state; or

(c) involves commercial paper which is made, drawn or transferred within the state.

(4) The Article on Investment Securities (Article 8) applies whenever any contract or transaction within its terms is made or occurs after the effective date of this Act and the contract

(a) is made, offered or accepted or occurs within this state; or

(b) is to be performed or completed wholly or in part within this state; or

(c) involves an investment security issued or transferred within this state.

But the validity of a corporate security shall be governed by the law of the jurisdiction of incorporation.

(5) The Articles on Bulk Transfers (Article 6) and Secured Transactions (Article 9) apply whenever any contract or transaction within their terms is made or occurs after the effective date of this Act and falls within the provisions of section 6–102 or sections 9–102 and 9–103.

(6) Whenever a contract, instrument, document, security or transaction bears a reasonable relationship to one or more states or nations in addition to this state the parties may agree that the law of any such other state or nation shall govern their rights and duties. In the absence of an agreement which meets the requirements of this subsection, this Act governs.

This, too, produced negative reactions. These were largely based on the assumption, actually not justified, that section 1–105 followed the mechanical choice-of-laws theories of Professor Joseph H. Beale of Harvard, as those theories were embodied in the American Law Institute's Restatement I of Conflicts of Laws, for which Professor Beale was the Reporter. Two facts tended to support the assumption. One was the designation of specific fact situations as being determinative of the stated choices of law. That was the way Beale had set forth his hard and fast jurisdiction-selecting rules, and the critics tended to overlook the fact that the Code's choices would be different from Beale's. The other was that Judge Herbert F. Goodrich, Director of the American Law Institute and Chairman of the Code's Editorial Board, was a former student and long-time disciple of Beale and was at least to some extent responsible for the successive drafts of section 1–105. On this point, the tendency was to overlook the fact that Judge Goodrich, in his support of these early drafts of section 1–105, had moved far away from Beale's still earlier rules. These reactions were, nevertheless, part of the reason for the slow acceptance of the Code by state legislatures in the next few years. Reconsideration of the language was called for, but there was no serious thought of abandoning the objective of having the Code apply to all the fact situations to which the due process clause would permit its application. It was sincerely believed to be a better body of commercial law than any other anywhere, and the best basis for choice of law was deliberate application of this ''better law.''

Simplification was the principal result of the reconsideration. The 1958 official draft of the Code, substantially completed in 1957, put section 1–105 in very nearly its present form. It became apparent that, apart from permitting parties to agree on what law should govern their transactions, the effect of the detailed listing in the 1952 Code of the fact situations to which the various portions of the Code were to apply was nearly the same as a simple statement that all the transactions listed were to be governed by the relevant parts of the Code. The listed fact situations, it was believed, all bore a constitutionally ''appropriate relation'' to the forum state in which the Code was the law. But if any of them did not, the new phrasing, ''this Act applies to transactions bearing an appropriate relation to this state,'' evaded possible unconstitutionality. At the same time it avoided hard-and-fast rules of the Bealian kind and left the choice-of-law limits open-ended so that they would fit in with whatever new developments the future might bring to that small branch of constitutional law.

The next conflicts change came in 1972. It was not a modification of section 1–105 as such, but rather a deletion of all choice-of-law provisions from section 9–102 and a revision of the choice-of-law provisions in section 9–103, both dealing with secured transactions. This increased somewhat the scope

of the first paragraph of section 1–105, but left as before the separate applicability of choice-of-law rules laid down for the five separate areas identified in the second paragraph of section 1–105, including the revised section 9–103. Section 8–106, on the law governing certain investment securities transactions, was revised in 1977, and another minor change was at the same time made in section 9–103, correlating it with the revised section 8–106. That is where the Code's conflicts sections stand today. There are still a number of doubts and unresolved questions not only under section 1–105 but under the other listed sections as well.

Party autonomy—reasonable relation

With specified exceptions, ''when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.'' What constitutes a ''reasonable relation''? How far afield may the parties go in deciding for themselves what law is to govern their transactions?

The theory of party autonomy in choice of law has not always been accepted by American jurists, though it has for a century been a factor affecting choice of governing law in contracts cases. Acceptance of the parties' stated intention, or even their implied intention, as to what law should govern their contract is a part of the common law of conflict of laws today. To that extent the Code merely follows the common law. The unanswered question is only as to where the outer limit lies. The term ''reasonable relation'' sets an outer limit, and suggests that common sense defines it, but still does not locate it, geographically or otherwise.

The Official Comment on section 1–105 is not very conclusive. The Comment's principal reliance is on *Seeman v. Philadelphia Warehouse Co.*, a case in which, actually, no choice-of-law clause was involved. The holding was that a contract calling for a rate of interest usurious by New York law but valid by Pennsylvania law should be governed by Pennsylvania's law, and the contract sustained. There were substantial elements of both making and performance in each state. The court did rely upon an inference that parties contracting in good faith would have intended their contract to be governed by the law of the one of the only two related states that would validate it. This was not so much party autonomy in choice of law as it was a preference for the law that would validate a contract made in good faith—a ''basic rule of validation'' approach.

The Restatement (Second) of Conflict of Laws is somewhat more in point. It specifies an outer geographic limit on the contracting parties' freedom to name the governing law by providing that their choice will not control if ''the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice.'' This of course is only a negative, not an affirmative, statement as to how far afield the choice may go. Yet the implication that the parties are free to choose the law of a state unrelated to the transaction or to themselves is significant. The significance is increased by the implication that a ''reasonable basis'' for such an extraneous choice may exist. And the Official Comment on section 1–105 does say:

''an agreement as to choice of law may sometimes take effect as a shorthand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.''

The argument that follows is that agreements by contracting parties as to what law shall govern their transaction are not essentially different from other parts of their contract upon which they are completely free to agree. The only limitation should be that they cannot lawfully do something that would be violative of the strong public policy of a concerned state. Reasonableness should have to do with good reasons for wishing a particular system of law to govern their transaction, not necessarily limited to states having physical contacts with them or it. That is the view taken by most academic interpreters of the Section.

A set of facts suggested by the most recent commentator illustrates the argument. Suppose a contract completed in Florida for sale of goods to be delivered to a Canadian buyer in Montreal by a seller incorporated in Delaware but operating factories in Arkansas, Louisiana and Wisconsin. The contract stipulates that New York law shall govern its validity, construction and enforcement. ''The stipulation could be upheld based upon the parties' familiarity with New York law, its fuller development in dealing with issues of the type presented by the particular contract or perhaps the parties' preference for a particular substantive doctrine established under New York law. Unless the selection offends a fundamental public policy of the forum state or constitutes a wilful evasion that smacks of bad faith or overreaching, the court would have no cause to interfere with the choice of the parties.'' The same author, however, cites two cases both holding that similar contract stipulations were ineffectual because New York had no physical connection with the transaction sued on. Despite such cases, it is not unlikely that the ''reasonable relation'' required by section 1–105 will some day, in some courts, be held to be satisfied simply by the parties' deliberate designation of a relevant law that in their opinion best serves the purposes of their voluntary transaction.

It must not be thought that every choice-of-law clause in every commercial contract that any parties execute is deserving of enforcement. Such clauses can be hidden in the fine print of take-it-or-leave-it form contracts which casual customers have little or no opportunity to study. Adhesion contracts are always suspect. Something turns upon the meaning of the Code word ''agree.'' The take-it-or-leave-it party may not have ''agreed'' to a strange and unread choice-of-law clause in the fine print that was never called to his attention. At least there can be as much justification for avoiding these clauses as there is for avoiding any other harsh and unanticipated provision in any kind of adhesion contract. Other Code provisions also afford means for avoidance of unfair choice-of-law clauses. Section 1–103 preserves defenses based on ''estoppel, fraud, misrepresentation, duress, coercion, mistake, * * *''; section 1–203 ''imposes an obligation of good faith'' in all contracts; and section 2–302 permits refusal of enforcement as to any unconscionable clause in a sales contract. The enforceability of choice-of-law clauses is no more required than for any other sort of contract clause.

It must be admitted, also, that choice-of-law contract clauses have been avoided by simply neglecting to notice section 1–105 as a controlling statute.

One of the worries that was discussed when the party-autonomy part of section 105 was first drafted was whether third persons, not parties to the contract but affected by it might be prejudiced by the parties' selection of a state law unfavorable to the third persons' interests. Such third persons may include creditors of a seller who retained possession of the sold goods, other creditors of either party or nonbuyers in whose favor a warranty might or might not run.

The drafters' quick answer to this worry is in the wording of section 1–105 itself. It says that the parties may agree on what law is to ''govern *their* rights and duties.'' This does not refer to the rights and duties of third persons. That may not be conclusive in all situations. More in point is subparagraph (2) of the section, which in its five specific exceptions identifies the situations in which the interests of third persons are most likely to be involved, and takes them out of the party-autonomy category. There may be other situations, but at least the problem is minimized.

''This act applies . . . appropriate relation''

''Except as provided hereafter in this section . . . [and] failing such agreement this Act applies to transactions bearing an appropriate relation to this state.'' One purpose behind section 1–105 from its beginning was that the Code (''this Act''), believed to be the most nearly perfect system of commercial law yet devised by man, should be as widely applicable as possible. Within the United States, the only limitations upon territorial applicability of an otherwise valid state statute (which was what was contemplated for the Code), are to be found in the Federal Constitution. What are they?

The due process clause in the fourteenth amendment is the traditional one, and probably still the principal one. *Home Insurance Co. v. Dick* is the leading case. In it, the United States Supreme Court held that for Texas to apply Texas law to invalidate a time-for-suit clause in a Mexican insurance contract, valid by Mexican law, was a violation of due process. The constitutional requirement, broadly stated, is that no state's substantive law may be applied to govern a transaction unless the transaction had some fairly substantial connection with that state. In *Dick*, the only Texas connection was that the plaintiff, assignee of claims under the Mexican contract, was a Texas domiciliary. That was not enough. There are many contacts that will suffice, but they must be significant ones.

The 1949 and 1952 drafts of section 1–105 listed a considerable number of specific contacts which the drafters believed, or at least hoped, would be accepted by the Supreme Court as sufficiently substantial to permit application of ''this Act'' or the designated one of the Act's articles. One of the frequently-voiced objections to these early drafts was that several of the listed contacts were so casual, so insignificant as elements in the total transaction, that they would not satisfy the constitutional standard. Some of them probably would not have. That was one reason why the specificity of the early drafts was abandoned in the present (1958) revision. Yet the basic thought that the Code was a superior body of commercial law that ought to be widely applied was not abandoned. Making it applicable whenever the facts bore an ''appropriate relation'' to the forum state having the Act preserved the potential for maximum applicability, without risking specific unconstitutional possibilities.

Another concern also was involved. This one arose partly from the fact that probable wide adoption of the Code, plus variant interpretations of it and local amendments to it, made it less urgent that ''this Act'' as it was operative in any given state be there applied to essentially extrastate transactions. Assurance that the Code as amended and interpreted in any given state was clearly the ''better law'' could not be maintained. Forum shopping by plaintiffs not interested in ''better law'' but only in law most favorable to their private interests would be encouraged by a choice-of-law rule always requiring application of the forum's version of the Code. The original purpose of the earlier

section 1–105, to compel application of ''this Act,'' in every state that adopted the Code, to every commercial lawsuit filed in the state, was no longer the worthy purpose that it had at first appeared to be.

Also important was the modernization of American choice-of-law law was occurring at about the same time, breaking away from the old hard-and-fast mechanical rules that had been accepted during most of the century. The infusion of Brainerd Currie's concepts of ''governmental interest,'' of Ehrenzweig's idea of a ''basic rule of validation, of Cavers' ''principles of preference,'' and of the fundamental ''choice-influencing considerations'' into the mainstream of conflicts law has made that body of law far more reasonable than it used to be, and far more acceptable as an intelligent basis for choosing between competing laws.

Choice-of-law problems in commercial litigation do not arise as often today as they did before the Code or in the Code's early days. Many of them are resolved beforehand by agreement of the parties. Others are covered by the specific rules set out in the second paragraph of section 1–105. For the rest, the governing words ''appropriate relation'' can well be taken to refer to what appears to be appropriate under sensible modern choice-of-law principles. There is good reason to believe that this is the approach which the majority of courts are taking to the problem.

There may be infrequent cases not covered by either of the two sentences in the first paragraph in section 1–105, nor by any of the five possibilities specified in the second paragraph. These will involve transactions in which the parties have not agreed to as to what state's law shall govern and in which the transaction does not bear ''an appropriate relation to this [the forum] state.'' The situation will arise when the plaintiff has for reasons of his own filed his lawsuit in what has been called a ''disinterested third state.'' It might be resolved by a forum non conveniens dismissal. But if jurisdiction is retained, since the Code simply prescribes no choice-of-law rule for the case, the court must of necessity fall back on its preexistent statutory or common law of conflicts law, whatever that may be.

Paragraph (2) of the section

The second paragraph of the 1958 draft of section I–105 named five areas, identified by numbered Code sections, that were not to be governed by the rather loose provisions of the first paragraph. These areas, for the sake of maximum predictability of results in the transactions covered by them, were to be subject to hard-and-fast choice-of-law rules, explicitly laid down. The governing law was to be that of a designated place, so that the parties could know beforehand, by knowing that law, what the legal consequences of their transaction would be.

Maximum assurance of this predictability was provided by requiring, for each of the five areas, that the whole relevant law ''including the conflict of laws rules'' of the designated place be applied. Reliance upon this *renvoi* technique was designed to make certain that the forum court trying the case would handle the issue in exactly the same way that a court at the designated place would handle it, by applying the same choice-of-law rules that court would apply and thus reaching exactly the same decision that would be reached by a court at that place. Accidents might interfere with this absolute predictability, but that came as close to it as could be planned.

The section as thus drafted in 1958 remains unchanged except for the scope of the last (fifth) area. That was modified in 1972, and the modification has now been accepted in a majority of the states. Each of the five excepted areas will now be noted.

Section 2–402. This section in part of the Article on sales of goods. It deals with the rights that a creditor of the seller may have against the sold goods by reason of the seller's misleading retention of possession or other allegedly fraudulent conduct with reference to the goods. The Code itself provides that certain types of conduct are either fraudulent or not fraudulent. Apart from those provisions, section 2–402 prescribes a specific choice-of-law rule, that the law governing the creditor's rights, if any, in the sold goods (as against both buyer and seller) is that of the state where the goods are situated. This is the sort of case in which one related state's law is likely to be as good as another's, and about as relevant. The goods' situs is an ascertainable extrinsic fact on the basis of which a firm determination of governing law and resultant rights can most readily be made not only by a court but by the parties themselves.

Section 4–102. Article 4 of the Code deals with bank deposits and collections. Section 4–102 provides:

''The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.''

Here again the purpose was to lay down a clear and simple choice-of-law rule that would prescribe the law of an obvious and readily ascertainable place to govern the literally millions of elementary transactions that occur on every banking day in the United States. The Official Comment makes it clear that the rule is to ''apply from the inception of the collection process of an item through all phases of deposit, forwarding, presentment, payment and remittance, or credit of proceeds.'' Unity of governing law is part of the objective. At the same time, however, section 4–103 permits the parties, ''by agreement,'' to vary the choice-of-law rule laid down by section 4–102. Thus the party autonomy which is a central feature of section I–105 is available for this area also.

Section 6–102. The law governing bulk transfers of tangible goods is covered by Article 6 of the Code. The paragraph numbered (4) of section 6–102 provides:

''Except as limited by the following section all bulk transfers of goods located within this State are subject to this article.''

The following section (6–103) does not deal with choice of law, but rather lists eight kinds of transfers that are not governed by Article 6 at all, therefore not by section 6–102.

Again, situs of the affected goods is made the controlling choice-of-law fact. There has been criticism of sections 6–102 and 6–103 of the Code, but the criticism has apparently not been directed at the choice of law provision in paragraph (4) of section 6–102.

Section 8–106. Investment securities (stocks, bonds, and the like) constitute the subject matter of Article 8. Section 8–106 does not lay down conflicts rules for all matters covered by the article, but only for a specified part of it. The first paragraph of section 1–105 governs as to the rest. The 1972 version of section 8–106 was as follows:

''The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.''

That version is still the law in most states. In 1977, however, the section was changed to read:

''The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

''(a) registration of transfer of a certificated security;

''(b) registration of transfer, pledge, or release of an uncertificated security; and

''(c) sending of statements of uncertificated securities.''

It is interesting that both versions of the section repeal, presumably for the sake of emphasis, the *renvoi* provision which is in any event applicable to it, as well as to all the others of the five specified exceptions listed in the second paragraph of section 1–105.

The modification of the section does not change the rule as to what law governs the validity of a security as issued, nor as to the transfer of certificated securities. What it does is clarify the aspects and effects of registration, particularly of uncertificated securities, that are to be governed by the designated law. As under the earlier version, the first paragraph of section 1–105 relates the rest. Application of the law of the issuer's ''jurisdiction of organization'' to registrations and closely related matters present no real difficulties and is in keeping with normal expectancies.

Section 9–103. Secured transactions, the subject covered by Article 9 of the Code, includes some of the most difficult areas of commercial law, and the choice-of-law sections of the article have been among its most controversial. In the 1958–1962 version of the Code, section 9–102 applied most of the article's provisions to ''any personal property and fixtures within the jurisdiction of this state.'' The 1972 revision deleted this choice-of-law clause completely. The 1958–1962 version, in section 9–103, dealt with choice-of-law issues as to validity, perfection and the effects of default in security transactions. The 1972 revision eliminated the conflicts parts dealing with validity and defaults, leaving only as hard-and-fast choice-of-law rules those parts dealing with perfection and the consequences of non-perfection of security interests. These obviously are substantial legal areas. But the deleted areas, from both sections, were also substantial. The choice-of-law rules applicable to them are now those set out in the first paragraph of section 1–105.

There are many ways in which movable goods can be pledged as security for discharge of obligations owed to creditors or other obligees, and many ways in which third persons may acquire conflicting claims. Removal of the goods from one state to another may be contemplated or not contemplated by the secured party (obligee), and removal may occur even though it was not contemplated. Removal increases the risk that third persons may, possibly in good faith, acquire conflicting claims to the goods. Official recordation of the security transaction (''perfection'' of the security interest) is the accepted method for validating the security holder's interest as against most of such conflicting third-person claims. But recordation where?

That is the principal question which section 9–103 undertakes to answer, along with companion questions as to the effects of non-perfection. Potential fact situations and the variant rules prescribed for them by section 9–103 are too elaborate for detailed explanation in this short article. They are much clearer, however, under the 1972 revision than they were before, also more fair and more efficient. They are sufficiently specific that not a great deal of litigation on choice-of-law questions has developed in states, now

a substantial majority, that have enacted the 1972 revision, and commentators on the section have envinced general agreement as to its scope and applicability. By 9–103(1)(b) perfection of security interests is governed by the law of the state where the chattel was located at the time of the transaction, except that under 9–103(1)(c) if at the time a purchase money security interest is created the parties contemplate removal of the chattel to another state then the law of the other state governs, subject to a 30-day recordation requirement. A certificate of title thus issued will in most situations protect the holder of security interests noted on it for four months after the chattel is removed to a different state, after which time an innocent purchaser, under 9–103(2)(b), will take free of a locally unrecorded security interest.

There are still problems, especially with reference to inherently movable chattels such as motor vehicles. Most of the states have motor vehicle title certificate laws, under which motor vehicle titles are integrated in properly issued certificates, but not in improperly issued ones. In the ten states which have enacted the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, there is coordination with the corresponding provisions of the Code, but in some other states there may not be. Perfection of security interests in chattels the title to which is supposed to be integrated in a title certificate is referred by the Code to the relevant title certificate law. Under the Code, however, if a title certificate though improperly issued in a second state (fraudulently procured, as after a theft or by an absconding buyer after a conditional sale) is fair on its face, a buyer of the chattel who purchases it in good faith and for value in reliance on the bad certificate, and ''who is not in the business of selling goods of that kind,'' gets good title even against the owner of a prior properly ''protected'' security interest. A used car dealer who relies on such a bad certificate, on the other hand, would not prevail over the prior security interest.

* * * * *

Mr. HOLLINGS. Mr. President, I will read this little example to show exactly what we are getting at:

Suppose a contract is completed in Florida for the sale of goods to be delivered to a Canadian buyer in Montreal by a seller incorporated in Delaware, but operating factories in Arkansas, Louisiana, and Wisconsin; the contract stipulates that New York law shall govern its validity, construction, and enforcement.

Now, there we are. Talking about foreign shopping, New York lawyers sitting up there on the top floor of the World Trade Center Building, having their martinis at lunch, they say, ''We do not care what State this is in, we have the Universal Commercial Code and for us we will select where we are, where it is convenient for us to try cases, or any other forum that is available to us.'' But not the injured party.

They claim all they want is uniformity, but have the unmitigated gall to include an exclusion for manufacturers—for manufacturers. They boldface put it in there as an exemption for manufacturers for this particular law that they say is such a national necessity.

I have seen a lot of activity in my service here as the junior Senator over the years, but I have never seen a provision where they come in, absolutely representing the manufacturers and saying they are trying to get money to the injured parties. They really say that. I will go back to the CONGRESSIONAL RECORD and show it.

Where all the representative organizations of injured parties, whether it is the lawyers themselves or otherwise the consumer groups of Americans say ''No, no, no, do not give us this,'' yet they put in all the favorable provisions for the manufacturers. With respect to the joint and several, we know there are some 10 States that do not include joint and several but rather, several only for the proof of compensatory damages.

Do we think they make that uniform? Just as they do not extend punitive damages to those States that do not have it, they do not extend the joint and several provision to those States that only have several.

If it was the intent to get uniformity, we would have it there, but they do not provide it there.

So, we can go right on down the list in all regards to this particular bill with respect to uniformity on the one hand, or how far they have come over the past several years and made it more reasonable, when the truth of the matter is they have included a lot of things here in this particular measure that were included in the House bill, so that when it passes the Senate, of course, it will not be conferenceable at all. It will not be subject to the conference because it will be a provision not in dispute but contained in both measures.

I yield the floor.

AMENDMENT NO. 597 TO AMENDMENT NO. 596

(Purpose: To provide for equity in legal fees, and for other purposes)

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

The PRESIDING OFFICER (Mr. DEWINE). The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM] proposes an amendment numbered 597 to amendment No. 596.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the reading be dispensed.

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

The amendment is as follows:

At the end of the pending 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 ''claimant'' means any natural person who files a civil action arising under any Federal law or in any diversity action in Federal court and—

(i) if such a claim is filed on behalf of the claimant's estate, the term shall include the claimant's personal representative; or

(ii) if such a claim is brought on behalf of a minor or incompetent, the term shall include the claimant's parent, guardian, or personal representative;

(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 claimant and the attorney, whether by telephone or in person, concerning the details, facts, or basis of the claim;

(G) the term ''natural person'' means any individual, and does not include an artificial organization or legal entity, such as a firm, corporation, association, company, partnership, society, joint venture, or governmental body; and

(H) 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 claimant shall, at the initial meeting, disclose to the claimant the claimant's right to receive a written statement of the information described under paragraph (3).

(B) WAIVER AND EXTENSION.—The claimant, 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 claimant shall provide a written statement to the claimant 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 claimant 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 claimant 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 (A).

(5) FAILURE TO DISCLOSE.—Except with regard to a claimant who provides a waiver under paragraph (2)(B) or (4)(B), a claimant 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 resulting from the failure to disclose 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, my esteemed colleague from Kentucky and I are proposing here an amendment which would establish a consumer of legal services' right to know how much he or she is paying and for what services. This is a right we recognize in most other markets for goods and services, and one which is no doubt recognized and respected by most reputable attorneys.

Nonetheless, Mr. President, there are too many cases in this country in which tort victims and other consumers of legal services have real difficulty determining whether they are getting a fair shake from their attorney.

As a result, victims receive less of their rewards than they should, the legal system costs everyone too much, and ever-higher fees are encouraged by a lack of competition.

Mr. President, this amendment will give consumers of legal services the means with which to make informed decisions concerning their legal representation. By establishing a consumer's right to know in the legal services market it will encourage competition and fair dealing. It will help make our system more fair to litigants and reduce the total cost of our legal system.

The unfairness of our current system is shown by the fact that tort victims receive only 43 cents of every $1 awarded from damages—the other 57 cents going to pay lawyers and court fees and to cover the litigants' lost time.

A significant portion of the 57 cents taken by the legal system goes directly to attorneys. Plaintiff's attorneys, in particular, collected from 33 to 40 percent of the average award in a contingency fee case—that, plus fees for all costs related to the litigation.

Now, I am not begrudging the hardworking attorney for his or her hardwon fee. Nor am I proposing that we establish any set fee. But it seems clear to me that something is wrong with a system in which, as was noted by Professor Lester Brickman of the Cardozo School of Law, 25 to 30 percent of all contingency fee cases have no real contingency.

In particular, in cases such as those involving airline crashes, fault often is not in doubt as a practical matter. This means that plaintiff's lawyers, who still collect their full 33-to-40 percent fee, may receive the equivalent of $10,000 or even $30,000 per hour.

I was struck in particular by a 1989 case Professor Brickman noted out of Alton, TX, in which a school bus was hit by a delivery truck. In this tragic incident 21 children were killed and 60 were injured. Obviously and rightfully there was a large judgment in favor of the plaintiff/children.

While there was no doubt about who was at fault, the lawyers still charged their full fees. As a result, according to Professor Brickman, the attorneys received as much as $30,000 an hour for their services—money for which they did little and which could have done much more to help the victims and their families.

Mr. President, victims are losing out, and so are the rest of us, because legal costs are too high. Professor Brickman estimates that contingency fees now run $13 to $15 billion annually. This represents a substantial portion, more than 10 percent, of the $132 billion which Tillinghast research estimates we spend as a nation on our legal system each year. This $132 billion acts as a huge, business-stifling liability tax on consumer goods and services.

Now, again, most attorneys recognize their duty to inform clients of how much they will be paying and for what services. Indeed, this is a standard for professions in general.

Doctors provide fee schedules to insurers. Architects and even furniture movers provide written, binding estimates upon request. Consumers of legal services, I believe, deserve the same treatment.

This is what our reforms would provide: At the initial meeting with the prospective client the attorney would be obligated to inform the client of his or her right to obtain a written fee statement within 30 days. This statement would contain, first, the estimated hours of the attorney's services that will be spent settling or attempting to settle the claim and handling the claim through trial; second, the basis on which the attorney proposes to charge the client—hourly, contingent, or flat fee; and third, the hourly rate, contingent fee, or flat fee the attorney proposes to charge.

The attorney would be obligated to give this statement to the client within 30 days unless the client in writing waives the right to receive it or extend the attorney's time within which to provide.

Similarly, within 30 days after completion of the litigation either by settlement or trial, the attorney would be obliged to furnish the client a written statement describing, first, the number of hours the attorney expended in connection with the claim; second, the total amount of the fee; and third, the actual fee per hour charged, regardless of how the fee was structured. Again, the client could waive the right to the statement or extend the 30-day deadline.

A claimant who does not receive the requisite disclosures has the right to withhold up to 10 percent of the fee charged and to file a civil action for any damages the client incurred as a result of the failure to disclose.

Mr. President, we need these reforms to help potential clients make informed decisions concerning legal representation.

The legal services market is in particular need of open information because clients may never have dealt with the legal system before. This lack of client experience establishes a significant information and expertise imbalance, one that can lead to a client's receiving less favorable treatment than he or she might obtain with better information.

Moreover, this problem is made worse when an attorney is hired to provide services for a single piece of litigation. That lawyer does not have the same incentives to keep the clients happy at the conclusion of the lawsuit as an attorney providing services to a longstanding firm or client on an ongoing basis.

The right to know established by this amendment will facilitate an exchange of information concerning the quality of legal services provided, and even single-issue relationships.

Thus we can empower clients in their dealings with attorneys while actually increasing the ability of market forces to work in the legal services markets. The result will be increased competition, better service, lower fees, and savings for everyone.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the amendment proposed by my friend, the distinguished Senator from Michigan, is the first amendment that has been proposed to this bill in something over 24 hours of debate. It is a most interesting amendment. I hope that any Member who feels that he or she can contribute to the debate on the amendment will appear on the floor and share with Members of the Senate that Senator's views.

The amendment is relatively modest in one respect, and in another sense is expansive. It is not directly connected with the other provisions of this bill in that it is not limited to product liability litigation. It is, on the other hand, limited, as I understand it, to actions in Federal court—basically in the U.S. district courts—and applies to all such litigation in those courts.

The concept that there should be disclosure, both in the initial stages of an attorney-client relationship and at the end of that relationship, over a particular case is, of course, an appropriate one. On its surface, the amendment seems to be constructive. I hope we will very promptly get the views of other Senators on the subject.

I would like to conclude the debate on this relatively narrow amendment before we adjourn this evening.

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. HOLLINGS. 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. HOLLINGS. While I am trying to obtain a copy of the amendment, I have in hand from the distinguished Senator from Michigan a copy of a letter dated April 24, I take it, outlining the amendment itself. It says here:

> Under our proposal, at the initial meeting the attorney would be obligated to inform the client of his or her right to obtain, within thirty days, a written statement containing (1) the estimated hours of the attorney's services that will be spent (a) settling or attempting to settle the claim and (b) handling the claim through trial; (2) the basis on which the attorney proposes to charge the client (hourly, contingent or flat fee); and (3) the hourly rate, contingent fee, or flat fee the attorney proposes to charge. The attorney would then be obligated to provide that statement to the client within thirty days unless the client in writing waives the right to receive it, or extends the time.

Mr. President, on the matter of fees, I was in the practice actively for 20 years and I never had outlined this. I have always had an understanding, and a written one. I wish I had one of the forms here, because it was the minimum fee schedule, approved by the Charleston bar, my hometown, where we had a minimum fee schedule—at a formal meeting that was agreed upon—and that was a contingency contract. And wherein I was retained, I had that contingency contract signed not only by, of course, the client, but by myself.

In 20 years I have never found this problem. You can get this professor. I doubt he has tried a case, because I find that is the case with most professors and that is why they are professors.

But right to the point, this so-called estimated hours. Let me go to one of the cases that was taken all the way to the Fourth Circuit Court of Appeals and then finally abandoned before the Supreme Court. It was a case of the C&S Bank as the trustee for Harold Tummestone versus the Morgan Construction Co. The reason I got the bank as a trustee is because the particular individual had been severely damaged, brain damaged, which I will be glad to go into because, unless others want to speak to this particular amendment, until I can get a copy of it I want to say a few words.

But we wanted to get comity or the trustee to bring that particular case. I knew the bank had credibility. I wanted to bring credibility to this so-called damage suit. Of course I got the bank to go over there and handle it and have them review all of my activities.

With respect to that, I can tell you the bank would not have required, and the bank would not have had any idea, nor would I have had any idea about the estimated hours of the attorney's services that will be spent (a) settling or attempting to settle the claim.

Excuse me, let me rescind that particular statement by saying, yes, I could have put on there an estimation of (a) the hours spent settling or attempting to settle the claim. But, I can tell you here and now, they never offered any settlement. We tried that case. It was not until the jury came in that they wanted to try to even talk about settlement. I will never forget it. The trial judge in court recommended that we settle the case. The truth of the matter is I had proven a very, very strong case. I felt very confident. In spite of the admonition of the trial judge, I told him to go ahead and write his order, whatever it was, but I was not going to yield 1 red cent on that particular verdict because I knew what we had done. And I was not offered any settlement.

I never had billable hours. That is annoying to this particular Senator and lawyer. I have no idea how you can really make it. You might sit in an office and talk about so many hours you are going to try to settle. But it depends on how you reach the case on the docket and what the pressure is that you can bring on the defendant, if they can get a continuance and everything else of that kind, and there is such a tremendous variable it does not help the client and it does not help the lawyer. It is a sort of spurious thing.

We believe in the client being informed. The information that I have always had with respect to the contract and agreement with my clients is just exactly as I have pointed out. It is a contingent basis of one-third, whereby we assume, as the attorney for that particular case, all costs and all court costs, all medical fees to get examined by doctors and specialists' fees.

I remember in this particular case I had to get a neurosurgeon to come down and spend several days and later on testify. So not only were his fees billed to me—you have to pay the doctor's fee if you do not want a witness who feels like he has not been paid. You want him to be a happy witness, so you pay his medical fees. You pay the investigative fees. You pay all the interrogatory fees, discovery fees, all the time. You pay for the appeals and the brief and the court, the transcript of record and everything else, the printing of that on appeal.

And of course all your hours and time—I did not sit down and start computing hours and time. But for the poor, indigent client, ''Look. Don't worry. We will do our level best to get you any recoveries made, and any offers made we are obviously going to tell you what the offer is and make sure you know about it. And you have the approval or disapproval of any kind of settlement offer.'' Because, of course, we have malpractice in law as well as malpractice in medicine. So you have to protect yourself and deal open and on top of the table with the particular client.

But I can tell you now. Being at the bar, this particular thing here is the first I ever heard of it. I started in 1947; 1997 would be 50 years. So in almost 47 years of practice, I never heard this as a problem. Let me go further. I can tell you what I find as a problem. But the basis on which the attorney proposes to charge the client an hourly contingent or flat fee, I think I can answer that and just say what I have said here.

Three, the hourly rate contingent fee or flat fee the attorney proposes to charge.

So mine again would be just the contingent fee. I could comply with two and three. But I have no idea about the estimated hours of settling or attempting to settle the claim and estimated hours of handling the claim through trial. Of course, it says nothing here about the appeal.

It says similarly, within 30 days after completion of the litigation, either by settlement or trial, the attorney would be obliged to furnish the client a written statement describing, first, the number of hours the attorney expended in connection with the claim; second, the total amount of the fee; and, third, the actual fee per hour charged regardless of how the fee was structured. That brings us back.

I really object to bringing it back to billable hours because we have to work and represent clients. I am not in Michigan in one of these large law firms. We are in a relatively small town. I guess speaking with respect to large law firms in any event, and I have to spend, not bureaucracy and regulatory. Here we have regulatory reform. Now they have regulations here about actual fee per hour charged. We will have to hire someone to keep track of this thing because I have work to do, study the law, interview the witnesses, and talk about not only the pleadings and everything else of that kind but the chances of prevailing. All of that is tied up as we have been hearing about 2 to 3 years. I would rather just put it on a contingent basis trying my best to get it to trial and get it to a conclusion, and not be into the proposition of the actual fee per hour charged and trying to compute it.

There is nothing wrong with disclosure. Like I say, I disclose. I want a clear understanding. I cannot represent a client fully and fairly unless there is absolute trust. You build that up. You do not write that into law up here in Washington. I practice law. You get a reputation. You get a reputation for trust and for accomplishment, and by that reputation of being able to be successful at the bar and totally trustworthy, the word spreads. You get a client and you get a successful law practice. Incidentally, I had it. I had at least three times what I made when I got here in 1966.

But one of the things I really did not like was charging clients. I never did charge enough. A client told me that

later on, as did several lawyers. I would rather come up here where I do not have to worry about charging the clients. I can talk to the jury and then go in with the jury and vote. I like this much better. I get a variety of cases, too. I do not get a reputation just by bringing one set of cases on the claimant side. You get any and every case whether it is a terrorism case, whether it is a product liability case, or whether it is going to be telecommunications or whatever it is. So it is the enrichment of the learning experience up here that attracted me and not the fees.

But having said that, what really disturbs me is this trying to bureaucratize the law practice which I have resisted. But if we are going to go ahead and bureaucratize the law practice, what really is outrageous in my opinion is this billable hours whereby this crowd downtown here is charging $300, $400, $500 an hour.

I will never forget when I was first up here and I put in on the case statute the textile amendment. I got help from the distinguished Senator from New Hampshire on the other side of the aisle, Norris Cotton.

After we succeeded in passing that textile bill over 25 years ago, Senator Cotton said, ''You know what so and so downtown was paid to pass that bill?''

I said, ''I did not know he had anything to do with the bill.''

He said, ''No. But he was retained by the industry and given $1 million to get that bill through.''

I said, ''Did you ever talk to him?''

He said, ''No. I never did talk to him. But I just found that out.'' I never talked to him.

But these lawyers in this town get these enormous fees. I found since that time regarding drugs—that is a terrible menace to our society—that these lawyers that are successful in the drug cases immediately demand and receive a $50,000 retainer, $100,000 retainer, large, exorbitant fees of that kind. I think that is really the thing that discourages society against the lawyers. I think what we ought to do really is limit the attorneys' fees. I think what we ought to do is limit the billable hours, the attorneys' fees in all cases, the billable hours to $50 an hour.

Mr. President, at $50 an hour, at a 40-hour workweek, and a 52-week year, you would exceed over $100,000. That is just $50. Of course, if you work on weekends and overtime like any trial lawyer would work overtime. Everybody was off to the football game and Sunday afternoon driving with the family, and I was working in the office and Sunday night getting ready to go to court on Monday morning. You could easily at $50 an hour, if you work as a lawyer, make $150,000 to $175,000 a year. I think that is a good salary for a working lawyer. Senators get less, of course, and work harder. We start out early in the morning around here, and then when you supposedly get time off like Easter break, that is constituent service.

What I want to do is send an amendment to the desk to limit attorneys' fees in all civil actions to $50 per hour. And at the end of the matter proposed to be inserted, I want to add section 302, limitation on fees. If an attorney at law brings a civil action, or is engaged to defend against any civil action, the word ''action'' should be inserted there because I was not familiar with this particular amendment and never had heard of it until the distinguished Senator from Michigan submitted it. But if any attorney at law brings a civil action or is engaged to defend against any civil action, the attorneys may not be compensated for legal services provided in connection with that action at a rate in excess of $50 an hour.

I expect to get reelected on this amendment. I can tell you here and now, if we can bring that down to $50 an hour. I remember my poor colleagues on ethics charges having to go back on this particular record.

You have my colleagues here right now who would elect me President of the Senate if they could get a fair vote because they were charged $400 an hour, and they all owe their lawyers downtown. You come to this place and in the legal game of bringing ethics charges and everything else of that kind and then having to go through all the records and what have you and pay the lawyer downtown, you have got $400, $500 an hour. I have heard of all kinds of charges of that nature. And I think that what we ought to do is get to the real problem in these civil actions, not just in product liability, if we are going to have an amendment that goes into all of this disclosure like there is some kind of secret hocus pocus.

Now, let me agree with the distinguished Senator from Michigan. I noted in that letter as I was reading, and I quote, ''This concern is not merely hypothetical.'' So says the Senator from Michigan.

To give just one example: According to the Washington Post, last month, attorneys collected $16 million in a settlement of antitrust claims against several airlines. Their clients received coupons worth $10 to $25 redeemable toward the purchase of airline tickets, under limited and restricted conditions. According to Prof. Lester Brickman of the Cardozo School of Law, in many tort cases lawyers are charging standard contingent fees even though the contingency is in name only. Similarly, professionals who audit law firm fees find significant overcharging in many of the cases they examine.

If you got the contract that this lawyer has had, you cannot find any overcharging. If you get the one-third, you have to pay all the costs and you have been paying for doctors; you have been paying for printing costs; you are paying for interview costs; you are paying all kind of costs over the 2- to 3-year period, and that comes out of your fee. That does not come out of the claimant's award or verdict, I can tell you here and now.

I do not know the background of this particular case, but it is obvious to me this antitrust claim—and that is what these lawyers get in so much billable hours. I noticed in one they had on another bankruptcy, and so forth, if someday we can retire and get to be a referee in bankruptcy and sit around on golf courses, learning how to finally settle the bankrupt nature of the entity, we can pay really thousands and thousands of dollars in fees, which to me is a disgrace. I have seen that happen in my own backyard, and I have complained about it in our hearings on bankruptcy cases.

But this $16 million in the antitrust claim no doubt was approved by the Court itself. Now, they had a claim and they had all of these billable hours. I know how to get that $16 million down to about $2 or $3 million by coming down to my amendment with $50 an hour maximum at that particular time. I think that is one way to rectify what the distinguished Senator from Michigan finds is an abuse.

It is not really lack of disclosure because when you get an antitrust case of this kind, you bring a class action, which apparently this was, you really produce a case that was not in existence. You go around and fetch people who do not have any idea that they are being recharged and you tell them I wish to get and bring a class action; I happen from research to believe that you have a case here; you are not obligated to pay anything to me unless we succeed.

So the clients, while the distinguished Senator from Michigan may complain and I may complain at an inordinately high $16 million fee, you can bet your boots that the people themselves had nothing to complain about because they did not have anything in the first place. They did not even know they had a claim. They did not even know they could get involved and help bring this abusive practice of overcharging by the airlines to a halt.

So they have performed a public service. Whether the lawyers in that particular case deserved $16 million, at least the Court thought so. And the clients could well have appealed, and it could have been adjusted, and it could be subject now to adjustment and that kind of thing. I just really do not know. I agree that I am, as the Senator from Michigan, disturbed not about disclosure because clients can find out. And I can tell you now, if you have a client and you come around and all of a sudden win a case and you do not have an understanding, that client can go to another lawyer and you have malpractice on your hands. You can be hit with a malpractice suit, whether they win or lose. What happens is that hurts your reputation. So irrespective of the merit of the particular case, you

are supercautious in this day and age to not engage in any kind of misunderstanding with clients. So, yes, write it down, write down the contingent fee.

But I would have to oppose the amendment with respect to the billable hours. But if there is to be billable hours in product liability claimants attorneys' restrictions, then I think maybe, if that is the will of the body, they want to consider limiting attorneys' fees in all civil actions to $50 per hour.

AMENDMENT NO. 598 TO AMENDMENT NO. 597

(Purpose: To limit attorneys' fees in all civil actions to $50 per hour)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk to the amendment of the Senator from Michigan and ask that the clerk report.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows.

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 598 to amendment numbered 597.

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

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

The amendment is as follows:

At the end of the matter proposed to be inserted, add the following:

SEC. 302. LIMITATION ON FEES.

If an attorney of law brings a civil action or is engaged to defend against any civil action, the attorney may not be compensated for the legal services provided in connection with that action at a rate in excess of $50 an hour.

Mr. HOLLINGS. I have explained the amendment and about read it to my colleagues.

I thank the Chair. I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I am pleased to be a cosponsor of the amendment by the distinguished Senator from Michigan [Mr. ABRAHAM] requiring lawyers to disclose to their clients information about fee arrangements.

The amendment of the Senator from Michigan is a very simple consumer protection amendment. Too often, those in need of legal services are inexperienced in evaluating whether they are getting good value for the money they pay. After all, choosing a lawyer is not exactly like choosing a lawn mower. No objective specifications, to my knowledge, exist. It is virtually impossible to compare prices. The only thing a prospective client may know in selecting the lawyer is what law school he or she attended, and that he or she passed the State bar examination. The client may not even know if it took the lawyer more than one try to pass the bar exam. And unfortunately, some lawyers take advantage of unsuspecting clients. In contingent fee cases, lawyers charge standard rates, regardless of how much effort or how much risk is involved in the particular case, typically, to take one-third of any settlement, 40 percent of any award resulting from trial, and frequently 50 percent if the case gets appealed. Many jury verdicts are eventually reduced on appeal, so often an injured person will recover less money the further the case is litigated.

A few weeks ago, the Washington Post reported on the settlement of an antitrust case against several airlines. The clients got $10 to $25 coupons redeemable under restricted and limited conditions. The lawyers shared $16 million in fees.

Lawyers who bill their clients on an hourly basis create problems of a different sort. Consider the case of the Denver law firm that claimed it did not bill its clients for the first class airfare. A legal auditor hired by a client discovered that the firm bought business class tickets but individual lawyers were upgrading to first class at the airports and then billing the clients. In another firm, a lawyer was discovered to have billed for 62 hours in a single day—quite an accomplishment, I might say.

Still, another lawyer drafted a motion for a client that could be used in thousands of asbestos cases that the lawyer was defending. The lawyer billed his clients 3,000 separate times for the same motion—3,000 separate times, I repeat, Mr. President, for the same motion.

These anecdotes are related in a recent U.S. News & World Report story entitled ''Lawyers Who Abuse the Law.'' Add on to a few lawyers who take advantage of their clients the reality that the legal system does not fairly compensate those who seek redress. Someone injured because of another's negligence has as much chance of winning in a lawsuit as he or she does by taking a turn at the gaming tables of Las Vegas. Sometimes, as at the casinos, it is possible to win big. But we know that in gambling, the house is usually the big winner. The same is true in the legal system, only the house is the system itself—lawyers and court costs.

After all, more than half of every dollar spent in the liability system, 57 cents goes to the lawyers and to the courts. The injured get only 43 cents of that dollar.

These experiences are causing the American people to lose confidence in our legal system. The same U.S. News & World Report article found that 69 percent of the American people believe lawyers are only sometimes or not usually honest.

Restoring integrity to our legal system is a fundamental goal of this reform effort. This amendment is designed to give clients some reasonable information about the financial aspects of the relationship with a lawyer.

Under the amendment of the Senator from Michigan, the lawyer would be required to provide the client with two statements, one at the outset of the representation and another when the case is concluded.

The attorney must provide the client with the following information at the beginning: How many hours will be spent trying to settle the case; how many hours it will take to bring the case to trial; how the attorney will charge the client—hourly, contingent, or flat fee; and, the precise rate.

A final statement at the end of the case must include the following: The number of hours the lawyer spent on the case, the total amount of the fee and the effective hourly rate, regardless of the rate actually charged.

This basic information will go a long way toward restoring America's faith in our legal system, and it will enable those who need legal counsel to be better informed in selecting counsel. The scope of the amendment is limited. It applies only to those cases filed in Federal courts. So the Senator from Michigan has narrowed the scope of this considerably.

While there is no reason for these disclosure requirements not to apply to State courts, we are trying to be mindful of imposing too many requirements upon the States in this particular instance. So we have left the scope of this effort quite narrow, and the States are free to adopt these disclosure requirements on their own, obviously.

Let me close by stating what the amendment does not do. First of all, it does not prohibit or restrict contingent or hourly fees. It does not mandate the use of contingent or hourly fees.

We recognize the importance of contingent fees. In some situations, a contingent fee may be the only way a person can afford to hire a lawyer to pursue a case. But the Abraham amendment affords consumers important information. It will help those choosing lawyers to be good consumers, and it will put consumers on a more level playing field with the lawyers whose services they need.

So I want to commend the distinguished Senator from Michigan for his amendment. I think it is an excellent amendment. I hope it will be adopted by the Senate at the appropriate time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, of course, you can see now what is entering into this particular issue, and that is what I would call candor. The reason this issue has survived over 15 years but never passed the Senate, the reason it hasn't gotten anywhere is the antipathy to lawyers. And here in the middle of the treatment of product liability, a very restricted part of civil actions—you take all the civil actions in the United States filed, 9 percent of all civil actions filed comprise tort claims. And if you take all the tort claims filed, only 4 percent of the 9 percent comprise product liability.

What you have is thirty-six one-hundredths of the civil actions being treated in product liability. But superimposed on top of that comes the first amendment, and the first amendment is: ''Kill all the lawyers,'' they said in King Henry VI, Shakespeare. We will kill all the lawyers here. We have the disclosure of attorneys fees and information.

They take an anecdotal measure that they refer to in the newspaper relative to antitrust, having nothing to do with product liability, and they put in an antitrust charge which is no doubt a class action—not class action on product liability—and a class action that has been conducted over the many years. I have to go back and find out what it was.

Quite to the point, the $16 million, with the inference here, they do not tell you how many millions went to the claimants. Obviously, millions went to the claimants, but when you had thousands and thousands of claimants, maybe millions of claimants, then it did reduce it to a $10 to $25 redeemable toward the purchase of an airline ticket.

Those things come out when you get the full facts. But this anecdotal approach, and taken with all civil cases in Federal court and putting down lawyers' disclosure amounts gets to the candor that really is behind the movement here at hand.

Product liability has been handled at the State level and in a very judicious and forceful fashion. We know it is not a national problem. All the little things that they tried to bring up over the years—incidentally, Mr. President, by way of amusement to this Senator, I remember when they brought up the Little League, and the Little League had the right and said, no, no, we are not a part of this case. Then they had an anecdotal amount of Girl Scout cookies and they had the right and said, no, we are not into this at all. Then our former colleague who, incidentally, sat right here in the Senate, the Senator from South Dakota, George McGovern, was on a little TV exposé, how he went out of business on account of product liability, and then he reversed field and said, no, no, they had cut that particular little 30-second bite that they had him and former Congressman and then Secretary Jack Kemp on, which they were trying to build up.

They tried every amusing thing in the world to give some force and credence to our product liability problem. There is none. There is no national problem in product liability. Now if we cannot get the votes for that, then what we ought to do is get lawyers fees here and call it disclosure, like the lawyers are running around cheating their clients. Come on. If the lawyers do that, they are not going to last long. I do not know what town they practice in, but reputation means everything in the profession. Oh, yes, we object to doctors and doctors' fees and everything else, until we get sick, and then we want the best and we love our doctors. In a similar fashion, yes, they all complain about the lawyers, until they get in trouble and then they get a lawyer of their choice and have complete trust.

Like I say, at the bar we require a minimum fee kind of schedule and contract, and the lawyers of the local bar associations police their groups. And, yes, there are many cases being brought up now before our State supreme court for malpractice, disbarment, and everything else of that kind, where they have taken the client's money. But that was not because they did not disclose. You are going to find those kinds of lawyers and those kind of individuals in every practice, profession, trade, or business.

It is unfortunate, but you certainly do not need here at the Federal level to try and burden product liability with a lawyer fee act. But if we are going to do it, let us get to the real heart of the matter, because there is a cleavage of division. When, Mr. President, I work for you as my client, I do not get paid until I succeed and you understand the percentage or the contingent basis. If I go to you under billable hours, in addition to trying to win your case, I am trying to win myself more fees, and on a billable hour basis, the more I can say that I worked on Saturday and I spent some hours reading here and I looked there and everything else—in other words, I am trying my case and not the client's case.

I think that is unethical. I think it is basically unethical. There are a lot of things that I think are unethical. Perhaps our conference that we have around here every Tuesday trying to ambush each other is. We never had that before. We had policy committees. As the distinguished Parliamentarian who has been here for years knows, the policy committee set the seriatim of the treatment of measures. But we never had parties meeting, the Republican conference and the Democratic conference, to meet in ambush of the other side and come around here and talk about ethics.

When you get these billable hours, you begin to work for your billable hours, you begin to work for your case rather than the client's case. I never did like it. I never charged billable hours. I resent it and reject it. But if we are going to have it, let us limit it because it is unforgivable what they are trying to charge. If that is what the market forces are, I never heard of all the hours charged. Look at the O.J. Simpson case, what they say those high-powered lawyers are charging. Maybe we can have a hearing before the Judiciary Committee and find out. I know we have not had any hearings on this.

The product liability measure was referred to the Commerce Committee and there was not one word of testimony on this matter. That made me withhold the matter of lawyers fees. I was waiting for somebody to raise the subject of let us get the lawyers. Now that it has been raised in the Abraham-McConnell amendment, I have to amend that amendment with my particular one of a limitation of $50, at the most, on any billable hours.

As I pointed out, I am confident that the anecdotal antitrust case—not a product liability case—would reduce the $16 million. Oh, that would reduce it down to $2 or $3 million.

So we are moving in the right direction in the Hollings amendment. But more than that, I would challenge those who sponsored this amendment to bring me the product liability case wherein the claimant represented by an attorney was misled, misinformed, or not disclosed fully what the fee basis was. I do not know of any. I never have heard of any. I cannot understand it. Maybe it happened here in this antitrust case. But if that is what they are disturbed about, do not just reach around in a magazine article having nothing to do with product liability or reach around in a newspaper article in the Washington Post having to do with antitrust and a class action brought over a series of years and court approved that we do not have the facts for, having nothing to do with product liability. I want to ask them to please bring—if that is their intent now on disclosure—evidence of where it is a national problem.

Heavens above, we have enough work to do around here. But if we are going to start debating lawyer's fees at the national level, and disclosures, and how many hours, and what do you expect, and how many hours on settlement, and how many hours on trial, and then the actual fee per hour charge, regardless of how the fee was structured, and all of these things of that kind, this is a solution looking for a problem. What the real problem is, is lawyers. So they say we can enhance this product liability initiative by going at lawyers. And we will find out who is for lawyers and against lawyers.

Well, I happen to be for lawyers. We will have to get that saying of ''kill all the lawyers.'' But that was really a laudatory comment, whereby lawyers stand between tyranny and freedom. In Shakespeare, you will find that reference with respect to lawyers not being against all the lawyers, but the

tyrant was saying the only way we can prevail and continue this tyranny is to get the lawyers because they are the only ones that understand and know and stand in our way of freedom, and we can continue this tyranny. So it was not a pejorative saying of ''kill all the lawyers.''

We can go through to the Founding Fathers who were all lawyers and drew the Constitution and worked at it overnight. We can come right on down the line with respect to the lawyers in the history of this land, whether it be President Lincoln in the days during the Civil War, or most recently here, in civil rights cases, Thurgood Marshall and others. If they had not had those lawyers, I can tell you now, having been at the local level over the many years, had Thurgood Marshall not succeeded in Brown versus Board of Education, you would not have found the advancements made.

Advancements were not made as a result of the Civil Rights Act of 1964 so much as the advancement made in the 1954 Brown versus Board of Education decision by the U.S. Supreme Court, brought by the trial lawyer for the NAACP, Thurgood Marshall.

I will bring the cases, when we have time, to the attention of my colleagues. The hour is late and I want to yield to others to be heard on this.

Since it has just come up, I have represented to the distinguished manager of the bill, it is not our intent to delay. We will survey colleagues on this side of the aisle and see what amendments they want to present. I want to see if there are those who want to talk on this particular measure before we vote. And pending that, Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANTORUM). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, my staff brought to my attention—I wish we had billable hours for Senators. We could make a living up here. Maybe that is the next amendment we will have if they insist on this amendment, Mr. President.

Pending that, we have the Model Rules of Professional Conduct and the Code of Judicial Conduct by the American Bar Association.

I look at rule 1.4, ''Communication'' and I read:

> A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
>
> A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

That is the American Bar Association Model Rule that we all are governed by.

With respect to the fees themselves, rule 1.5:

> (A) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a file include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to a client, that the acceptance of the particular employment will preclude other employment by the lawyer;

I take that, Mr. President, to be no conflict of interest.

> (3) the fee customarily charged in the locality with similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, repetition, and the ability of the lawyer or lawyers performing the services;
>
> (8) where the fee is fixed, whether the fee is fixed or contingent.

It goes on in detail on the basis of the rate of fee, the terms of payment, and all the necessary things—the divisions of fee, how to settle if there is a dispute about the fee, all are matters of disclosure.

What they are really coming with on product liability is an assault against the bar. I know the former distinguished Vice President of the United States thought it was good politics, and he brought up about lawyers at the American Bar Association.

If a person practices law, they are under the rule and guidelines. It is still a profession. Just like I have resisted actually the TV coverage of the proceedings here of the U.S. Senate because we could get a lot more work done and we did a lot more work and we got things done.

I also have resisted the so-called advertisement by attorneys with the neon sign ''Divorces, divorces,'' or ''If you think you are hurt,'' or, ''We get more money in our claims than anybody else.'' I think that is unethical. I hate to see that coming about with the particular profession.

If we take the television out of the O.J. Simpson courtroom, that case could be handled in the next 3 weeks. But it will take the next 3 months at least with TV there. The idea is to get justice and not to amuse the public generally.

I hope we get the television out of this body, the television out of the courtroom, and get back to some economic sense, go to work for the people of America, and certainly not take what never has been recognized as a national problem, except with respect to the American Bar Association and its code of conduct which it has over the many, many years. It has never made a national problem to be legislated upon.

I know what they have in mind, and I think that my amendment will help them get at the 60,000 billable hour lawyers, and not the trial lawyers. They really go after the trial lawyers and product liability.

I want to talk about the corporate lawyers and that billable hour crowd that extends out. I have heard my colleague from West Virginia. He does not have any understanding of the law practice. He says, why, at the State level it is very difficult to get product liability reform. False. We have it in 46 of the 50 States in the last 15 years.

He says one of the reasons we cannot get it are these trial lawyers holding things up because they like to extend their cases and get more money. Extend more cases, I get more expenses.

I am paid on a contingency basis. I am not paid by a billable hour. The fellow who gets more money is the insurance company lawyer, the corporate lawyer. They love it. They try to stretch it out, get continuances, make more motions and everything else. I got 10 or 15 good cases in the office that I have taken for seriously injured clients. I have hundreds of thousands of dollars in time and costs wrapped up. I am really having to carry and finance, which we do. I have done it in my private practice.

We know how it is in corporate law. They have the mahogany desks and the Persian rugs, and they sit down there with the paneled walls and just answer the phone and everything. Answer the phone and say, by the way, charge him that I talked to him on the phone. I never heard of a contingency fee lawyer say I talked to somebody and charged so much. They charge so much per telephone call, so much per letter, so much per hour, so much per this. There is more per fees in the practice than we could ever contemplate.

Heavens, let us not write this bureaucracy into the law.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I ask unanimous consent I be permitted to speak as in morning business for 10 minutes.

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

IN MEMORY OF SENATOR JOHN C. STENNIS

Mr. DASCHLE. Mr. President, I would like to take a few minutes to discuss the life and career of Senator John C. Stennis, who passed away earlier this week.

Senator Stennis served in this Chamber for 41 years. His work here included

serving as chairman of the Senate Armed Services and the Senate Appropriations Committees and as President pro tempore of this body.

Among his legislative achievements was his ability to bend and flow with the times. Once a staunch segregationist, Senator Stennis cast his vote for the Voting Rights Act of 1982.

One area in which he never changed, however, was in upholding the safety and security of this great country. Senator Stennis warned against overextending our military capacity. He also warned against wasteful defense spending. But he never wavered in his support of the country's national defense and ensuring that it maintained the military capacity to guarantee our freedoms and our liberties.

During his four decades in the U.S. Senate, Senator Stennis was always an abiding example of integrity and fortitude. His respect for the institution of the Senate and the law of the United States made him an early opponent of the excesses and abuses of Senator Joe McCarthy. As a result, he and Senator Sam Ervin were named as the two Democratic members on the Watkins committee that investigated the recklessness of Senator McCarthy and led to his censorship.

In July 1965, the Senate created the Select Committee on Standards and Conduct, the forerunner of our current Select Committee on Ethics. This was a controversial creation, and everyone knew that whoever chaired it would be in a difficult position. The Senate had traditionally relied upon the voters of a State to discipline a Senator for improper behavior, and institutional discipline is a painful problem in an institution that depends on the collegiality of its Members. The only logical choice for this important and difficult leadership position was Senator Stennis. The Mississippi Senator became so successful and so respected in this position that the committee quickly became known as the ''Stennis Committee.''

Mr. President, the career of Senator John C. Stennis was marked, not only with legislative triumphs, but with numerous personal triumphs over personal adversity.

In 1973, he was shot by robbers in front of his house and left for dead.

In 1983, his beloved wife of 52 years, Coy Hines Stennis passed away.

In 1984, a battle with cancer resulted in the loss of one of his legs and confined him to a wheelchair. While in the hospital recuperating from the surgery, he was visited by the President of the United States, Ronald Reagan. President Reagan later said that he had dreaded going to the hospital that day, for he feared the impact such a life-altering operation would have on a fiercely independent man like Senator Stennis. But the President explained, ''when I left, it was I who had been strengthened.''

He had been strengthened by the Senator's confidence, his faith, and his optimism.

Those qualities defined Senator Stennis' outlook on life. On his Senate desk he kept a plaque that simply read: ''Look Ahead.''

''That's my philosophy,'' he explained. Don't waste time lamenting the past. ''You have got to look ahead. I realize that life's not altogether what you make it. But that's part of it, what you make it yourself.''

Senator Stennis made for himself a wonderful life, and the Senate and the country can be grateful for it.

When he retired from the Senate in January 1989, Senate Majority Leader ROBERT BYRD called it ''the end of an era.'' And indeed it was.

Perhaps a greater compliment came from a Republican Member of Congress from Mississippi, who said, ''We'll miss him. Even if he's a Democrat, he's a great man.''

As the Senate Democratic leader, I say that is a great statement, even from a Republican.

In 1988, Congress established the John C. Stennis Center for Public Service Training at Mississippi State University. The center covers a range of historical projects, including an excellent oral history program. When a congressional historian approached him about an oral history of his own life and career, Senator Stennis initially opposed the idea, saying it would be too self-aggrandizing. The historian proceeded to explain that it was not only an honor, it was his duty to record for posterity his personal account of the historic events and decisions in which he had been involved.

''Well, sir,'' responded Senator Stennis, ''If you say its my duty, then I must do it, because I've always done my duty.''

Indeed he did.

It was not only his legislative accomplishments—and they were many—for which we so loved and remember him, it was also his commitment to God and country.

No person who has ever served in the U.S. Senate was ever quicker to tell you what was wrong with this country. But no person was ever quicker to tell you what was right about it, either.

Mr. President, Linda and I extend our most heartfelt condolences to the family of John C. Stennis: we share their grief and their loss. But we also thank them for sharing him with us, and I thank the people of Mississippi for selecting him to serve in the Senate for seven terms.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

SENATOR JOHN C. STENNIS

Mr. COCHRAN. Mr. President, I first want to commend the distinguished Democratic leader for his comments about our departed colleague and my good friend, Senator John C. Stennis. Today, there was a very appropriate editorial published in the Clarion-Ledger, in Jackson, MS, describing the effect that Senator Stennis had, by virtue of his service in the Senate, on the State of Mississippi.

I commend the editor for such a fine article and I ask unanimous consent that it be printed in the RECORD.

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

[From the Clarion-Ledger, Apr. 25, 1995]

JOHN C. STENNIS: INTEGRITY SET STANDARD FOR CONGRESS

The accomplishments of former U.S. Sen. John C. Stennis could fill pages.

Stennis' long and full life ended Sunday at age 93, and during the next few days, Mississippians, will hear many of the senator's accomplishments recounted.

His long and distinguished career in government left his mark on many of the policies of the United States, especially in military matters. There are many institutions that bear his name, even an aircraft carrier.

Mississippi is a much different place, and a much better place, because of the policies and economic development projects he brought to the state.

But, all of the political achievements, the things that most politicians are measured by, fall short when it comes to Sen. Stennis.

Stennis was, above all else, a man of integrity, a true statesman, whose adherence to honor and code of conduct made him legendary in the U.S. Senate, which he loved so dearly.

That is indeed a rare quality, especially in the mean-spirited politics of today.

Sen. Stennis' reputation for fairness made him a trusted colleague and confidant of presidents of both parties. He was known as the ''conscience of the Senate'' because of his high ethical standards and respect for the institution.

Throughout his long career, integrity and service were watchwords. It is appropriate that, of the institutions that bear his name, the Stennis Center for Public Service at Mississippi State University seeks to encourage young people to public service careers.

In his 1947 campaign, Stennis stated a simple creed: ''I want to plow a straight furrow right down to the end of my row.''

Sen. John C. Stennis succeeded with that pledge.

Mr. COCHRAN. Mr. President, I want to invite the attention of the Senate to a couple of points that are made in this fine tribute. After talking about many of the things that Senator Stennis did for the State the editorial writer then says:

But, all of the political achievements, the things that most politicians are measured by, fall short when it comes to Senator Stennis.

Stennis was, above all else, a man of integrity, a true statesman, whose adherence to honor and code of conduct made him legendary in the U.S. Senate, which he loved so dearly.

Mr. President, as I was beginning to think about putting this in the RECORD for the information of Senators, I realized that I sit at the desk that was occupied by Senator Stennis during the time he served in the Senate.

As you know, there is a tradition here to put your name in the desk drawer like schoolboys used to. Senator Stennis' name is in this desk drawer which he wrote in there and put the date that he began service, 1947, and a dash, and never did, of course,

put the date on which his service ended, which the distinguished Democratic leader pointed out was in 1989.

One other aspect of this desk is that not only has it been occupied by many Mississippians over the years, Jefferson Davis, to name one, John Sharp Williams, a very distinguished Senator who had served as Democratic leader in the House before he was elected to the Senate, and then served three terms in the Senate and probably was one of the most respected national figures of his day serving in the Congress. And serving from Mississippi it made our State very proud. But Senator Stennis occupied this desk from 1947—well over 41 years, as the Senators know.

But toward the end of his career he lost a leg to cancer, and this desk was located in the rear of the Chamber. So his wheelchair could move right up to the desk. But he never failed to rise and address the Senate even though he was confined to the wheelchair and had only one leg. He had the carpenters put a special place here where a bar could be fitted. There are two holes carved for wooden inserts in this desk to hold that bar. And the bar would rest inside the desk. Most Senators put the rule books of the Senate and a couple of other reference books in the top of their desk. But that had simply a bar there. He would put it there and pull himself up, and with that one leg stand erect to address the Senate because he respected the institution so much, its traditions, and its customs, always pointing out to other Senators that we should be in order; and having a tremendous influence because of his presence in this body.

The Senate is much better off because of his service here. The State of Mississippi is truly blessed to have been the State represented in the U.S. Senate by John C. Stennis.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

IN MEMORY OF THE LATE JOHN C. STENNIS

Mr. NUNN. Mr. President, I would like to speak for a few minutes this evening on a subject close to my heart, and that is the memory of our former colleague, John C. Stennis, who passed away on Sunday, April 23, at the age of 93. Senator Stennis served in this body for over 41 years, from 1947 to 1989.

For a long number of years, as I was growing up and following the activities of the Congress of the United States, Senator Stennis was one of my heroes, and that was long before I came to U.S. Senate. John Stennis personified for me the image of what a Senator should be, and that image inspired me as I considered whether to seek a seat in the U.S. Senate in the 1972 election. From my first days in the Senate, John Stennis was a patient mentor, a strong and valuable colleague, and a cherished friend.

It has been said that ''Great men are like eagles, they do not flock together. You find them one at a time, soaring alone, using their skills and strengths to reach new heights and to seek new horizons.'' Such an eagle was John Stennis.

John Stennis was a Senator's Senator. He was gentle and courteous in conduct, but tough and strong in conviction and in character. He was a man of singular purpose and broad vision—yet he was sensitive, very sensitive, to the needs and the wishes of others.

John Stennis personified the highest ideals of honor and integrity within the U.S. Senate. Members of the Senate from both parties and from widely divergent philosophical points of view treasured his steadfast leadership, his fearless courage, his kindness toward others, his unselfish devotion to public service, his love and respect for the U.S. Senate, the Congress, his reverence for the U.S. Constitution, and his unshakable faith in God.

Senator Stennis was an outstanding lawyer and judge before he came to the Senate, and his judicial temperament marked every aspect of his Senate service. Time after time, the Senate turned to him to address the most difficult and divisive issues, such as the conduct of Senator Joseph McCarthy.

When the Senate established the first Select Committee on Standards and Conduct, which was the predecessor of the Ethics Committee, it was only natural that Senator Stennis was selected as the first chairman. From 1961 to 1981, he served as chairman of the Armed Services Committee. As chairman, he set a standard that all of his successors strive to meet. He was a man of conviction, strong, moral character, and absolute and total courage. Despite much adversity—a life-threatening gunshot wound in 1973, right after I came to the Senate that tragedy happened, also the loss in 1983 of his beloved wife, Miss Coy, and the challenges of serious operations in later years, through all of that he served the people of Mississippi and the people of this Nation with courage and with strength.

Chairman Stennis was the Senate's preeminent authority on military affairs. His career spanned the period of the cold war. He came to the Senate in 1947, the year the Marshall plan was announced. He left in 1989, the year the Berlin Wall came down. He played a very large role in those events and all the events in between. He had guided this body through the difficult years of the post-Vietnam era and through the subsequent revitalization of America's Armed Forces.

Senator Stennis consistently supported a strong national defense even in times when it was not popular to do so. I recall clearly the first few years after I came to the Senate in the early 1970's, when virtually all defense programs were being challenged one after another on the Senate floor. Senator Stennis remained in the Chamber steadfast for hours and weeks and sometimes even months while the bill was pending in the Senate, making the case for maintaining a strong defense for our Nation.

At the same time, Senator Stennis was downright intolerant of wasted and misspent dollars, and he consistently opposed those who simply wanted to write a Pentagon blank check.

Senator Stennis remembered well the lessons of pre-World War II isolationism and he constantly opposed the recurring isolationist impulse, especially during the difficult post-Vietnam years. He was a rock of support for NATO at a time when there was strong opposition in the country to foreign military alliances. One of the first assignments he gave me when I got to the Senate was going to NATO and coming back and reporting to him on what I found there.

Yet he remained skeptical of excessive military involvement overseas and he expressed great concern about the plans for intervention in Vietnam before that intervention occurred. Once the Nation was committed to war, however, he always believed that American forces should be provided with the means necessary and the backing to accomplish the objectives assigned to them.

It was my privilege to serve with him since coming to the Senate in 1973 until he left in 1989. He was my friend. He was my mentor. He remained my hero. I will miss him, and I will miss his sound advice and wise judgment. During my first campaign for the Senate in 1972, I came to Washington to meet with Senator Stennis. This was before I was elected in November but after I had won the Democratic primary. I told him of my strong interest in military affairs, and I asked for his support in obtaining a seat on the Armed Services Committee if I should be elected.

I will always be grateful for his assurances of support and his assistance once I arrived, and certainly all of that played a very important part in my Senate career. With his support, I obtained a seat on the Committee on Armed Services, and I promptly sought his advice on how I should fulfill my duties. He told me, and I recall it well, that the best way to learn about the Defense Department and the military services was to deal directly and extensively with the men and women in uniform as well as the civilian employees of the Department of Defense. He encouraged me to listen to their advice and understand their point of view, to remain open and objective but always to at least listen.

He appointed me to be the chairman of the newly created Manpower and

Personnel Subcommittee which gave me the opportunity to follow his advice in a great number of details and with considerable amount of time.

Over the years, I listened to and learned from Senator Stennis as we debated the great issues of national security and other national affairs that faced our country in the 1970's and 1980's, and the lessons learned then still apply almost every day in the Senate in the 1990's. It was a marvelous education in the ways of the Senate, the conduct of national security affairs and the Constitution of the United States.

In 1987, Senator Stennis became chairman of the Appropriations Committee, and I became chairman of the Armed Services Committee. It was my good fortune to have him continue to sit on that committee, to be able to begin my chairmanship with Senator Stennis at my side, because I frequently consulted with him and benefited from his advice on the problems and issues that arose under the jurisdiction of the Armed Services Committee as well as many other matters that came to the floor of the Senate.

When Senator Stennis first came to this body, he said in his classic direct style, ''I wish to plow a straight furrow right down to the end of my row.'' There is no doubt he did exactly that. Senator Stennis grew up on a farm and he knew how difficult it was to plow a straight furrow with a mule. You cannot plow a straight line to your immediate goal or mark a stake in the field unless you keep your eye on the distant point that establishes your sight line. That is the way John Stennis lived. He staked out his immediate goals, but he always kept his eye on the distant goal, the values and principles that enabled him to plow a straight furrow right to the end of the row.

Mr. President, I also remember well his advice to me when I came to the Senate. I hope I never will forget this. He said, ''Sam, some new Senators grow and some simply swell. Make sure you continue to grow.''

Mr. President, no higher honor has come my way than serving in the Senate with John Stennis. When he retired a few years back, I said then it was hard for me to imagine the Senate without John Stennis at his desk. It is now hard for me to imagine the Nation without the benefit of his talent, counsel, and his sterling example. We will miss him. We will all miss him. But his legacy of integrity and devoted service to the country will inspire the Senate and the Nation and young people particularly for generations to come.

Mr. President, Colleen, my wife, and I extend our sympathies to his son, John Hampton Stennis, his daughter, Mrs. Margaret Stennis Womble, and to all of his grandchildren and great grandchildren, indeed, to all of his family and his friends, and we thank the people of Mississippi for sending this giant to the Senate for the number of years that he served. The people of Mississippi and the people of this Nation can be very proud of Senator Stennis. He will be remembered in history as one of the giants of the Senate. As long as there is a Senate, John Stennis will be remembered for his service, for his integrity, and for his character.

I thank the Chair.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

JOHN STENNIS—A LIFETIME OF SERVICE

Mr. HOLLINGS. Mr. President, I wish to pay honor today to one of the great Senators of this century, John Cornelius Stennis. His roots began at the turn of the century as a young farmboy, in the fertile soil of Kemper County, MS. And while his subsequent career was to take him to far away places, and to positions of great honor in our Nation's Government, his beloved home country was never far from his mind. Second only to service to his Nation, his dedication to the State of Mississippi was legendary.

He had amassed a distinguished record a public service, even before coming to the Senate in 1947. A Phi Betta Kappa law school graduate, he served as a State Representative, district attorney, and State circuit court judge. But it was here in the Senate where we shall best remember him. For more than 42 years, this Nation had the benefit of his wisdom and his guidance. He was the epitome of a Southern gentleman, and fairness and integrity were constants in his conduct. It was no mere happenstance that he was our first chairman of the Select Committee on Standards and Conduct. He was for decades the foremost guardian of our Nation's defense, forcefully and relentlessly pursuing strong defense programs throughout the Cold War years. His credentials as ''Mr. Defense'' made even more remarkable his misgivings and warnings to the Nation on involvement in combat in Vietnam, and he was a major author of our first war powers legislation. Chairman of Armed Services, chairman of Appropriations, President Pro Tem—his achievements here on this floor and in this body have been equaled by few.

And who among us who knew him will ever forget his quiet courage? He quietly brushed aside the impacts of being shot and robbed while walking home. Years later, after loosing a leg to cancer, he refused to yield to adversity—always rising to address this body, exuding dignity and determination with every action.

John Stennis was a patriot—a statesman—a Senator in the finest traditions of the word. He was one of the great lions of our assembly, and we will miss him. I read today where he once responded to a question about how he would like to be remembered. He said he hoped that one could say of him that ''He did his best.'' Well, that he did. And his best will serve as a reminder and a standard to all of us, for generations to come.

Mr. President, the distinguished Senator from Georgia has touched on it when he said I wish to hoe a straight furrow right down the field, that was John Stennis. I can hear him now. He had those sayings about not swelling but growing in experience. The reverence and respect at that particular time was for Senators listening and learning and profiting from experience. Now the pledge is when you come to town you are not going to listen to anybody; you have a contract. You are going to vote for it. And by the way, do not give me any of your experience because in 6 years I am gone. It is an entirely different atmosphere.

And when you see, as the Senator from Georgia has said in such eloquent terms, one of the finest, I am just deeply moved.

John Stennis and I became very close amid serving on committees together, particularly the Appropriations Committee later on.

But his family—the Peden clan—was from Fountain Inn, SC, where Mr. Quillen was born and other persons of eminence.

Invariably he would come back to South Carolina for the annual Peden clan reunion.

I figured, like the Senator from Georgia, that he was my sort of patron and leader. I listened to him many a time. I can tell you this. John Stennis was a man of this institution. We have Senator BYRD, who really reveres the Senate as an institution. John Stennis revered the U.S. Senate as an institution.

And as much as we liked each other and as close friends as we were, when I was chairman of the Budget Committee, he followed it very, very closely. When I was chairman back in 1980, he would say, ''Fritz, you're right. We have to somehow pay our bills. We are eating our seed corn.'' He would make a little talk on the floor, not only with respect to military affairs, with tremendous authority, but with respect to fiscal matters.

And later on, when I was not the chairman of the committee, but I talked to him and tried to get a vote with respect to that budget, he would say, ''I'm sticking with the chairman. I know how you feel about this, but we have got to stay with the chairman.''

I can hear him now. He was an institution man. And that says a lot for the stability of the body and the courtesy here and the ethics that we have. He set the highest standard of anybody I have ever known.

I will never forget the afternoon he was shot. Invariably, we would get together down at the gym there at this time, 6:30 going on 7 o'clock, and get a workout. He said, ''You've got to try to keep up with Strom.'' That is my senior Senator. He said, ''You will find if you stay in good physical shape, you will be able to keep up with Strom.''

We would work out. They had this wheel that you get down on your knees and you go forward and pull it backward and forward, and everything else.

He was on that wheel the afternoon he was shot. He left, if I remember correctly, about 6:15 and he was shot about 6:30 or 6:45.

He later related, when I went to see him, he said:

You know, I'm lucky. These fellows told me they wanted money and I did not have any money. And I said, ''Take my watch, anything else, my ring.''

And they cursed him and just fired five shots into his middle, his stomach, pancreas, and lungs—his insides.

He walked up to his house and talked to Miss Coy, Mrs. Stennis, his wife. He said, ''Call an ambulance and call Walter Reed.''

The ambulance came. And as they lifted him up, he remembered well hearing the chief of police, who had reached the home at that time, saying, ''All right, take him over to George Washington Hospital.'' He raised up on that stretcher—the last he ever remembered, he said, prior to coming to some 9 hours later—and said, ''Take me to Walter Reed. They are waiting for me there.''

He said that was the real fortunate part, because when he got to Walter Reed, they had two Army surgeons who had finished a 2-week lecture course to the Army surgeons around the country on bullet wounds and shrapnel wounds and battlefield surgery and that kind of thing, particularly with respect to the loss of blood.

His operation took 9 hours. I will never forget him saying that. He said, ''Had they not had that hard experience of when to stop and replenish and when to move forward * * *'' They had to sew up all his innards or he would have been long since gone.

He came back and, as Senator NUNN points out, he did not slow down at all. Later, when the cancer got his legs, he did not.

As Senator COCHRAN pointed out—who sits at the Stennis desk—he believed in this institution. He attended regularly all the sessions. He attended these debates.

I think television has ruined us all. Perhaps some would listen back in their offices. But you do not have the open exchange in the most deliberative body. You are here and get quips that staff gives you. They have prepared remarks and they run out and the RECORD is full and it appears it is a deliberative effort. Not at all.

Senator Stennis did not like that, and he said so. He attended the debates. He attended all the votes and he kept going until the very, very end.

Unfortunately, he was not as conscious and alert as he could have been the last few years. I wanted to go to see him, but my staff who worked intimately with him on the Armed Services Committee and later on on the Appropriations Committee, said that, ''Poor John would not recognize you right now.''

So he has gone to his just reward after the most distinguished career in the U.S. Senate of over 41 years.

He was a Senator's Senator if there ever was one in this body. He was not only, as pointed out, an outstanding authority on military affairs, but he had that fundamental feel of paying the bills and being straightforward in his treatment here with all the Senators and setting the highest standard of ethical conduct that you could possibly imagine.

We need that inspiration today that, unfortunately, we do not have. We are all going to miss him very, very badly.

I am sorry tomorrow I cannot be at the session relative to the continued debate on product liability. I want to attend those services. But we will be back here at 4:45.

But it is good that we have those who have served with him and remember him so well that will be there and be with his family. His daughter retired first in Charleston, where her husband was the dean at the College of Charleston and later up in Greenville, SC. So I am looking forward to seeing that family.

But I will never forget the inspiration he has given for all of us who have served with him to continue to serve.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. GORTON. Mr. President, I am going to submit a unanimous-consent which I believe has been cleared by both sides of the aisle.

I ask unanimous consent that there be 60 minutes of debate equally divided between Senators ABRAHAM and HOLLINGS, with debate to begin at 5 p.m. on Wednesday, April 26, on amendment No. 598, and that following the debate on the Hollings amendment the Senate proceed to a vote on or in relation to the Hollings amendment, to be followed immediately by a vote on or in relation to the Abraham amendment No. 597, as amended, if amended.

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

Mr. GORTON. I further ask unanimous consent that the pending Abraham amendment be laid aside in order that an amendment by Senator BROWN be offered, regarding rule 11.

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

Mr. GORTON. I further ask that following the two stacked votes, the Senate then resume consideration of the Brown amendment, and that following the disposition of the Brown amendment, Senator DOLE be recognized to offer his amendment on the subject of punitive damages.

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

ORDER OF PROCEDURE

Mr. GORTON. Mr. President, for the information of all Senators, Members should be aware that there will be two rollcall votes at approximately 6 p.m. on Wednesday. Senators interested in speaking on any of these issues or other issues related to product liability or legal reform should be prepared to speak throughout the day on Wednesday.

AMENDMENT NO. 599 TO AMENDMENT NO. 596

(Purpose: To restore to rule 11 of the Federal Rules of Civil Procedure the restrictions on frivolous legal actions that existed prior to 1994)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for Mr. BROWN, proposes an amendment numbered 599 to amendment No. 596.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . REPRESENTATIONS AND SANCTIONS UNDER RULE 11 FEDERAL RULES OF CIVIL PROCEDURE.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subsection (b)(3) by striking out ''or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery'' and inserting in lieu thereof ''or are well grounded in fact''; and

(2) in subsection (c)—

(A) in the first sentence by striking out ''may, subject to the conditions stated below,'' and inserting in lieu thereof ''shall'';

(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof the following: ''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.''; and

(C) in paragraph (2)(A) by inserting before the period '', although such sanctions may be awarded against a party's attorneys''.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United

States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

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–712. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to recover costs of carrying out Federal marketing agreements and orders; to the Committee on Agriculture, Nutrition, and Forestry.

EC–713. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 93–2; to the Committee on Appropriations.

EC–714. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 94–05; to the Committee on Appropriations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources:

Harriet M. Zimmerman, of Florida, to be a member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 1999, vice William R. Kintner, term expired.

The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. DOMENICI (for himself, Mr. NUNN, and Mr. KERREY):

S. 722. A bill to amend the Internal Revenue Code of 1986 to restructure and replace the income tax system of the United States to meet national priorities, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS:

S. 723. A bill entitled the ''Badger-Two Medicine Protection Act''; to the Committee on Energy and Natural Resources.

By Mr. KOHL (for himself and Mr. SPECTER):

S. 724. A bill to authorize the Administrator of the Office of Juvenile Justice and Delinquency Prevention Programs to make grants to States and units of local government to assist in providing secure facilities for violent and chronic juvenile offenders, and for other purposes; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. AKAKA, Mr. DORGAN, and Mr. WELLSTONE):

S. 725. A bill to amend title 38, United States Code, to extend certain authorities relating to the provision of community-based health care by the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mr. NUNN, and Mr. KERREY):

S. 722. A bill to amend the Internal Revenue Code of 1986 to restructure and replace the income tax system of the United States to meet national priorities, and for other purposes; to the Committee on Finance.

USA TAX ACT

Mr. DOMENICI. Mr. President, today for Senator NUNN and myself, this is a very exciting day because—after more than 2 years of study, research, and tremendous help from a lot of people and a lot of experts—we are today going to introduce a totally new income tax law for this land, both as to individuals and corporations.

Today we are going to introduce a totally new Tax Code. We will explain it to the Senate and the American people for the next 40 or 50 minutes. And it is our hope, since we have gone to extreme lengths to develop a totally new tax code in all respects —and indeed we will today introduce that totally new tax code—which will replace and get rid of the current income tax system in its totality both as to corporations, businesses and individuals in the United States.

We are hopeful that this document will begin a serious debate and that this approach, which we will explain today, will find its rightful place very high on anyone's list as they look at the needs of the United States for the future.

Before I go to my prepared remarks, let me suggest that for the Senator from New Mexico these are very exciting times because I believe the vision that most of us have is for a better America, for a better America for our children, a more competitive America with more good solid high-paying jobs for which we can train and educate our people and provide them with an opportunity for a satisfactory and happy life from the standpoint of material well-being.

The two things that haunt us in our efforts as leaders who say we are going to do our best to provide that for America are the enormous amount of debt that we incur in our Federal budget processes because we refuse to find a way to pay for the programs and actions of the Federal Government rather than to borrow for them. Thus we gobble up huge amounts of savings of U.S. citizens and corporate savings just to pay that debt, thus minimizing our future growth potential and increasing interest rates dramatically, and in a very real way diminish the productivity of our country.

The second thing is that we have a U.S. Tax Code that instead of promoting and prompting savings and investment is actually a disincentive to both. Instead of saying to the American people and American corporations we want you to invest more, we want you to save more, we have a Tax Code that says just the opposite. If you do either of those things, you are penalized under the American Tax Code; that is, the savings or investment. If you spend your money, in a sense you only pay taxes on that money which you spend once.

We very much hope in our new bill to create a level playing field from the date that it is adopted by the U.S. Congress forward, a level field in that people have a real choice as between investing and saving some of their disposable income and spending it. And as to American corporations, we hope we will greatly simplify the process by which they pay taxes to their country and at the same time dramatically encourage capital investment as compared with a Tax Code today which penalizes that.

So in order to get where we want to go, you have to know how to get there. This is common sense. The advice for a traveler seeking a destination and for a nation that is in quest of its destiny, and when leaders talk about their vision for the future, they invariably speak of creating a higher standard of living, better-paying jobs, and stronger economic growth. We do not do that or say that just because those are nice sounding words, but because they are indeed at the heart and soul of what America ought to offer to its people when we say this is a land of opportunity. We know where we want to go. But how do we get there?

The challenge facing the American economy, and those who work, those who invest, those who start companies, and those who continue companies in a prosperous way, the challenge facing them and the best way to improve the Nation's prosperity, in almost everyone's opinion, is to increase savings and investment.

When Americans save, they are really investing in America, and our Tax Code should reflect that national priority. Our major trading partners encourage in their tax codes savings, and so should we. There are many causes of inadequate private savings and investment, and I have already indicated that our inability to develop a budget year by year and over decades, whereby we pay for what we give our citizens instead of borrowing to give to them, is one very serious way that we do not save, or use our savings to pay for our profligacy.

The other very serious problem and perhaps most important is the disincentive in our Nation's tax policies. The Federal Income Tax Code is un-American in spirit and wrong in principle because it levies a double tax on dividends and taxes savings. It discourages risk taking, entrepreneurship, and

the creation of jobs. It is hostile to savings and investment and tilted toward consumption. It adds one-third to the cost of capital. It favors debt over equity financing. It encourages corporate management to neglect long-term investment in favor of focusing on short-term profits.

The way a country taxes its people deeply influences its potential for economic growth and thus for prosperity.

Our current code penalizes savings by taxing income when it is earned and then taxing interest and dividends that are generated by the initial investment. When an activity is penalized in the Tax Code, it stands to reason that it influences behavior. Taxpayers do less of those disfavored activities, and the current code is doing a good job of discouraging savings. Americans are only saving 2.8 percent of GDP.

This lack of savings leads to a shortage of investment which in turn leads to insufficient growth, stagnating incomes, and the loss of high-wage jobs.

The Congressional Budget Director, Robert Reischauer, testified before the Senate Budget Committee earlier this year. The report accompanying his testimony cautioned, and I quote:

> . . . the best way for the nation to prepare for [the] future is to save and invest more now. Greater investment, the main engine of growth, would enlarge the future economic pie. . . Investment in turn, fundamentally depends upon the available pool of saving, whether private (personal and corporate) or Government (federal, state and local).

Our current Tax Code taxes capital gains far higher than our competitors. We have created a ''backdoor'' capital gains differential by raising the top personal income tax rate to 39.6 percent but keeping the top rate on capital gains at 28. Thus, if we have any capital gains differential, it is that, and it is quite by accident and sort of a backdoor.

The differential is subpar when compared to our competitors, be it Malaysia, South Korea, Taiwan, or Belgium. They do not tax capital gains at all. Germany does not tax capital gains on assets held longer than 6 months. Canada, France, and Japan tax capital gains at rates from 16 to 20 percent.

Our current Tax Code is far too complex. The tax industry absorbs more resources than the gross domestic product of a country like Ireland. Companies complain about the IRS agents being permanently housed in their corporate headquarters, and the IRS is years behind in their auditing. Others perversely brag about needing supercomputers to calculate certain foreign tax computations.

As our Supreme Court Justice Potter Stewart noted: ''Our economy is 'tax relevant' in almost every detail.'' Taxes have become an increasingly important factor in investment decisions as other barriers to international capital flows have disappeared.

The philosophy of the USA tax Senator NUNN and I introduce today is to tax income that is not saved or invested rather than to tax all income that is earned.

The best way to achieve a prosperous destiny for our country is to improve the Nation's productivity through sustained investment by the private sector. Job creation is especially dependent on new products entering new markets, and we all know this. This does not happen automatically. It requires hard work and competition, and to a great extent investments that must be financed with equity capital.

Our tax proposal is a quest for the best tax system we can develop, one that should vastly expand the pool of savings and achieve significant simplicity in the bargain. We estimate that of the 700 Internal Revenue Code sections, over 75 percent would disappear and be eliminated with the adoption of our proposed code.

The USA tax base is total gross domestic product. The business tax and the individual tax are two parts of a single tax on a single tax base. The business tax is intended to be the first in a two-step tax collection process. The business tax would begin with gross domestic product—the sum of all goods and services produced and sold by all businesses together, minus, in order to avoid double taxation, those things that they have bought from one another.

The first taxable event would take place when businesses create income by producing and selling goods and services; the second taxable event, when individuals receive income, net of the business tax, in the form of wages, salaries, interest, dividends, and similar distributions to the owners of business.

This is a new Tax Code. This is a totally new approach to taxing events in our economic life. It is not a concept. It is a totally new Tax Code built on two concepts and greatly simplifies what we have.

Now, at this point, while I have more to say, Senator NUNN and I have ample time and I am going to yield to my friend from Georgia and first say thanks to him for all the work he has done and for the people he has brought into this fold who have helped us put this together.

The PRESIDING OFFICER. The Senator from Georgia [Mr. NUNN], is recognized.

Mr. NUNN. Mr. President, I think my friend from New Mexico has explained very well the current Tax Code and all of its problems and what it is doing to Americans' competitive position in the world and, most importantly, what it is doing to the real income of the American people.

This bill that we are introducing today had its origin several years ago when the two of us, on a bipartisan basis, one Democrat and one Republican, had the privilege of chairing the CSIS Strengthening of America Commission. The plan that our Commission released a little over 2 years ago, and that Senator DOMENICI and I cochaired with a number of other people from around the country as key members of that panel, was just that. It was a plan to strengthen our Nation, to strengthen our country, to strengthen our people, to strengthen our economy, and to strengthen our competitive position in the world.

That plan had three key elements. The first element was to get our fiscal house in order by embarking on a long-term plan to balance the budget. And we proposed that plan without using the Social Security surplus as we do today, without relying on any kind of dynamic scoring, without a constitutional amendment, and without a line-item veto. We proposed a plan that would lock in spending restraints first, before raising new revenues.

We have a long way to go to implement that plan. The Senator from New Mexico and I have struggled in this Chamber for several years trying to get caps on entitlement programs, and I suspect he will be leading the charge again this year as chairman of the Budget Committee.

The key to this part of our plan is controlling the growth of entitlement programs, as most of us who have studied it understand, but which neither Congress nor any administration, Democratic or Republican, has been prepared to do.

The second element, which my friend from New Mexico and I are here to talk about today, and a very important part of this overall plan, was to completely replace the individual and corporate income Tax Code of this country and create in its place a tax code that promotes savings and investment, rather than discouraging savings and investment, as does our current Tax Code.

The third element of our plan was an investment strategy that called for improved job training and apprenticeship programs to strengthen the workplace; national service; selected investments in infrastructure, including the so-called information highway; adequate funding for programs to help young children start school ready to learn, such as immunizations and Head Start; and a system of national educational standards. Some progress has already been made on many aspects of this third element of the Strengthening of America plan, thanks to the leadership of President Clinton, who has worked very hard on these areas, both before and since he became President.

The Commission was not saying that Government alone can solve our Nation's problems. In the final analysis, only the American people—working through their Government, but more importantly working in their own communities—can strengthen America. These three elements, however—balancing the budget, reforming the Federal Tax Code, and making the needed investments in our future—represent the action items for the federal government. Government cannot do it alone, but if Government does not do its part, we will never get our economic house in order.

Even though the proposed constitutional balanced budget amendment did not pass the Congress this year, I believe the Congress will still undertake a serious statutory effort this year to begin to balance at least the unified Federal budget. I expect my colleague from New Mexico will be one of the real leaders in that effort. While that is a laudable goal, and I have supported the constitutional balanced budget amendment every time the Senate has voted on it, I still believe, and our Commission concluded, that we need to do more than that. We need to balance the budget excluding the Social Security surplus.

The constitutional amendment we voted on earlier this year would have continued to use the Social Security surplus as an offset to the operating deficit in the rest of the budget, which means that this surplus would continue to be used to pay current bills rather than to prepare to pay for the retirement of the baby boom generation. As my colleague from Nebraska, Senator KERREY, has made abundantly clear, we are facing—or rather, we are failing to face up to—a real crisis when the Social Security trust fund begins to run annual deficits instead of surpluses.

The two most difficult tasks the Commission identified as the keys to putting our Nation's fiscal house in order—balancing the budget and reforming the Federal Tax Code—are still awaiting action. Today my colleague from New Mexico and I are introducing legislation that has been in the works for quite awhile. It has taken a good bit of time, more than we originally anticipated, because this legislation would implement the most revolutionary part of the Commission's plan, and that is the complete replacement of the current individual and corporate Federal income tax.

THE TIME HAS COME FOR FUNDAMENTAL REFORM

The House of Representatives, as part of their Contract With America, has already passed and sent to the Senate a bill that proposes to change several components of the current Tax Code—additional child care tax credits; expanded IRA proposals; increased depreciation of investments; and a lower tax rate on capital gains—without attempting fundamental reform of the Tax Code. This is an incremental, business-as-usual approach.

Senator DOMENICI and I, along with other people on the Strengthening Commission, concluded that tinkering with our Tax Code will not get the job done. Our fear is that incremental changes, however well intentioned, will complicate an already Byzantine Tax Code without yielding the increased savings and investment we all seek. Helping working families is a worthy goal, but without steady economic growth there is little that child care tax credits can do to help the middle class permanently raise its standard of living. Unlocking old capital is important, but it is crucial that we also create new savings and investment.

My colleague from New Mexico and I believe there is a better way. Today, Senator DOMENICI and I are introducing, along with Senators KERREY and BENNETT, the USA Tax Act of 1995, a comprehensive tax reform proposal that we believe represents the best way to accomplish everything the other reform proposals—both the incremental approach the House has passed, as well as the other proposals to replace the current income tax—are trying to accomplish, and much more. We welcome debate, comments, suggestions, and constructive criticism on this legislation.

Our tax system, Mr. President, needs more than a Band-Aid. It needs a transplant. If we are serious about our Nation's future, we have to scrap the current tax system and put in its place a system that will work for our people and for our country.

Over the past 2 years, Senator DOMENICI and I and others have been working on the details of such a system, the USA Tax System that we are introducing today. We call it the USA Tax System because USA stands for unlimited savings allowance, which is the key, fundamental part of this proposal. We believe it represents a fundamental change in the way America taxes itself, the way America saves, and the way America invests.

What do we mean by a tax system that works? We mean a system that encourages savings and investment. We mean a system that is perceived to be fair and is fair. We mean a system that is understandable. We mean a system that reduces the complexity of paying taxes for ordinary Americans by taking less time, fewer forms, and fewer dollars to comply with. We mean a system that is attuned to the international competitive realities and gives U.S. companies and their employees a chance to compete fairly in the global marketplace, which we do not have today.

We mean a tax system that is fiscally responsible. There is no point in creating a system that increases the private sector component of the national savings with one hand, while further reducing the public sector component of national savings, by increasing the deficit, with the other hand. We do not intend to increase the deficit under this proposal.

Our plan is intended to be revenue neutral. And I would say from the outset, if the official estimates indicate that this is not revenue neutral, one way or another that there will be adjustments made so that it will indeed be revenue neutral.

When Senator DOMENICI and I began advocating our concept of a complete overhaul of the Tax Code 3 years ago, the prospect of fundamental reform appeared to be several years off at best. Today, however, the clock has moved up. It is clear that, while we are just beginning the process of debating how to change the Tax Code, there is already a broad consensus in this country and in this Congress that fundamental reform is necessary.

In addition to our USA proposal, there are already two other proposals to completely replace the current income tax code being discussed—a flat tax and a national sales tax. In the coming months, all these proposals, and perhaps others as well, are likely to be discussed and examined. I am hopeful that as early as next year, Congress will attempt to enact one of these proposals. We welcome this debate, and we are introducing this legislation today to make sure that our proposal is fully included in this important national debate.

THE IMPORTANCE OF SAVING

Mr. President, we believe the central goal of any reform of our tax system should be to raise the level of national savings. We are proposing a tax system that we believe is smarter, and better for all taxpayers, because it removes the current bias in our Tax Code against the saving and investment that is the key to higher living standards. Higher savings, Mr. President, lead to more investment. More investment means that we have more productivity from American workers. The more productivity we have from our workers, the more competitive we are in the international arena. The more competitive we are in the international arena, the better jobs we have. The better jobs we have, the higher income we have as Americans.

That is a very important chain. That is the bottom line. The bottom line, in other words, is what happens to the real income of the American people in the future. There is a direct connection between how much we save and the real income of American people. That is the direct connection that we have to make sure our country understands. If we cannot make that connection in the American mind, there is no point in talking about a fundamental reform of the tax system. If they do agree that this proposition is true, then I think there is a tremendous opportunity here to make the fundamental changes we are proposing.

There is a direct connection between savings and higher real income for our people. That is the essence of our proposed USA Tax System.

The national savings rate in the United States is lower than that of any of our major competitors. In the 1980's, our savings rate dropped to an average of 3.6 percent, half the level of the 1960's and 1970's, and far below the comparable figures of 10 percent in Germany and 18 percent in Japan. In the first 5 years of this decade, 1990 to 1994, the U.S. savings rate has fallen almost 50 percent from the already low levels of the 1980's, to just 2.1 percent.

Without increased savings and investment, we cannot raise our long-term standard of living, meet our financial obligations, and build a better

society for today and for the generations that follow. The United States cannot continue to be the major competitive force in the world if other countries continue outsaving us and outinvesting us. It simply cannot happen over a long period of time. That is fundamental.

It is often said that the best way to increase national saving is to reduce the Federal budget deficit. I agree with that proposition. The Strengthening of America Commission concluded we needed to do just that, but that we needed to do more. We not only need to reduce the share of our national savings being soaked up by the Federal budget deficit—we also need more savings. And we believe our proposal can turn the Tax Code from a major roadblock to higher savings into an important tool to promote higher savings.

I do not believe anybody could argue that the Tax Code is not used to encourage socially desirable behavior. Would anybody argue that the deductions for home mortgage interest and charitable contributions that have been in the Tax Code for decades do not encourage home ownership and donations to charities? Yet the current Tax Code not only fails to encourage private saving, which is vital to our future, it actually discourages it. Yet there is no doubt that future generations will not have the same level of entitlement benefits from the Government that we have today. Our present entitlement programs are not sustainable at their current growth rates. That means that Americans are going to have to save more, to take more personal responsibility for their own futures.

That is why our Strengthening of America report contained a plan to both balance the budget by reforming entitlement programs and to reform the Tax Code to promote greater personal savings. We need to get the Tax Code working for us, not against us, to get people to once again adopt the mentality of savers who think about tomorrow as well as today. We need to start an education process in this country to make saving a national issue—not just a tax issue. People need to understand the fundamental importance of saving, both for their own future and for America's future. We literally and figuratively must save America.

The heart of our proposal, Mr. President, is the unlimited savings allowance, or USA. That is why we call it the USA Tax System. In essence, it allows individuals a deduction for the portion of income they save, and allows businesses to expense their new investments when they make them rather than depreciating them over a long period of time. If Americans want to consume more, both now and in the future, then America must save more and invest more. These new deductions for savings and investment will provide the impetus for higher economic growth, higher productivity, higher paying jobs, and a higher living standard for all of us. I think a higher living standard for all Americans is the ultimate test of fairness.

THE USA TAX SYSTEM IS A SINGLE TAX IN TWO PARTS

The USA proposal consists of a single, integrated tax in two parts: a progressive tax on individual incomes, and a low, flat rate tax on all businesses. These two parts are meant to work together. It is important that people not try to consider the two parts separately, because if they do they will not grasp the significance of the whole concept. It is a single tax levied in two places: at the business level where wealth is created and at the individual level where wealth is received.

This proposal allows an unlimited deduction at the business level for capital investment and, more important, it permits all citizens an unlimited deduction for the amount of their annual income they save and invest. The USA Tax System directly and systematically addresses our saving and investment problem.

To the individual, our system says, ''If you choose to defer some of your consumption in favor of saving income for your future and the future of your children, the Tax Code will not penalize you for doing so.''

And to the business enterprise, whether very small or very large, manufacturing, service, or agricultural, the USA Tax System says, ''If you choose to invest your profits in a new machine or a new process that will help you grow and put more people to work, the Tax Code will help you.'' The USA Tax System, by its very nature, would align the way we tax with our common desire to provide our children with a better tomorrow.

Mr. President, I will not go into detail on the individual and business component.

But there are other parts of the proposal that I think need some emphasis this morning.

THE INDIVIDUAL TAX

Let me describe the key features of the individual part of our proposal first. The individual tax would function in a manner similar to that of the current income tax. From your gross income, you would make subtractions before you figure your tax, just as you do now. You would subtract personal exemptions, a new family living allowance, a new savings allowance, and a limited number of itemized deductions. Gross income would include wages, salaries, interest, dividends, earnings withdrawn from unincorporated businesses, proceeds from asset sales—basically the same concept of income we have today.

First, the USA proposal contains a family living allowance that is similar to the current standard deduction except that it is in addition to any itemized deductions, not an alternative to itemized deductions. This family living allowance exempts the first dollars spent on consumption from taxation, because we know that people in low income brackets spend a higher proportion of their incomes on necessities than people in high income brackets.

In addition to the family living allowance, you would have personal exemptions just as you do under current law. A family of four filing a joint return would have its first $17,600 of income exempt from taxation by adding this family living allowance to its four personal exemptions.

THE UNLIMITED SAVINGS ALLOWANCE

In addition to these deductions, there would be a new deduction for the amount of income that is saved called the unlimited savings allowance. We define savings in this proposal as net new savings. That is key. If you add to the national savings pool, you would deduct that money before you pay taxes. In other words, to make it simple, if someone makes $40,000 a year and saves $5,000, they would pay taxes on $35,000, instead of today paying taxes before the savings on the entire $40,000. That is fundamental. We encourage people to save.

The unlimited savings allowance is similar to the IRA concept, but it is unlimited. It is not limited to $2,000 or any other dollar amount. It is not limited to saving for retirement. But it is for net new savings. We do not give a deduction for merely shifting savings around. That has always been one of the problems with the IRA.

The unlimited savings allowance is fundamentally different from the current Tax Code, which penalizes savings. Under the present Tax Code, savings are taxed twice, once when you earn the income that you save, and again when you receive a return on those savings; consumption is taxed only once.

The USA Tax System also reflects a fundamentally different philosophy in that we do not focus on where your income came from. We do not have different rates for wage income or dividends or capital gains. Under the USA Tax System, the point is not where the income comes from, it is what you do with it. The portion of your income you save, whether you are rich or poor, you do not pay tax on. The portion you spend, above the level for basic necessities, is subject to tax at progressive rates.

The deduction for individual saving also permits a new perspective toward designing a business tax. Because our proposal defers taxes on individual saving until they are spent, we can eliminate enormous complexities in today's Tax Code. There is no reason to be concerned about people sheltering their savings in corporations, which creates a huge portion of the complexity in today's Tax Code. We do not need elaborate rules to force businesses to distribute sheltered saving.

I am sure some people say that there is no proof that savings will respond to changes in the Tax Code, so how do we know your proposal will work? In response to that, I would say that first, you could just as easily argue is no

proof regarding any proposition of economics. Economics happens in the real world, with complex interactions that will never be exactly repeated, not in a lab.

Second, it misses the point to compare the USA proposal to the experience we had with individual retirement accounts in the early 1980's. With the IRA, you did not have to save more to get a deduction, you merely had to move your savings into an IRA. Since the Government was handing out tax deductions for moving savings from your right pocket to your left pocket, is it not surprising that those IRA provisions did not increase national savings.

But there is a crucial difference between the unlimited savings allowance that Senator DOMENICI and I are proposing and the IRA's of the 1980's. Our proposal rewards true increases in savings and does not reward shifting assets from one type of account to another.

Finally, I would say that a perfect world Tax Code would not affect people's economic decisions at all. But we all know we do not live in such a perfect world, and it is unlikely we ever will. We all know people do things sometimes that do not make a lot of sense, just to lower their taxes. To say that people do not respond to economic incentives simply flies in the face of everything we know about economics and human nature. What the Senator from New Mexico and I are saying is, recognizing that it is human nature to respond to incentives like tax deductions, let us give people an incentive to do the right thing, for our country and our economy, not the wrong thing.

OTHER DEDUCTIONS FOR INDIVIDUALS

In addition to the family living allowance, the personal exemptions and the savings allowance, we propose a limited number of additional itemized deductions. The higher the number of deductions, as we all know, the higher the marginal tax rates would have to be. So, there is a trade-off. We are proposing to retain a deduction for home mortgage interest and charitable deductions. We could have more deductions, of course, and certainly we welcome debate on which deductions people think should be added to, or subtracted from, our proposal—with one word of caution. The higher the number of deductions, the higher the rates will have to be to avoid increasing the deficit. There is a direct tradeoff between the number of deductions and the tax rate.

Our proposal does have one such additional deduction which I feel very strongly about, and that is a deduction for tuition expenses for post-secondary education, whether it is college, trade or vocational school, or remedial education. We feel it is important that the tax system provide a deduction for investment in human capital that parallels the deductions on the business side for investments in physical capital, since both investments raise the productivity and real incomes of workers.

THE USA TAX SYSTEM IS PROGRESSIVE

The USA Tax System is a progressive tax. Our system will have three graduated rates. We are proposing a progressive system, not a flat tax. We do not believe it is necessary to abandon the principles of fairness and progressive taxation in order to get a simpler, more efficient, growth-oriented tax code. It is important to keep in mind that the graduated rates in the USA Tax System will not create the same disincentives on saving and growth as today's tax system, since taxes will be deferred on income that is saved and invested.

There are four main elements that make the USA tax on individuals progressive. First, we have progressive rates. Second, we have a family living allowance that does not tax the first several thousand dollars of consumption for basic necessities. Third, we retain some progressive elements of the current code, such as an earned income tax credit—which we increase—and the tax exempt status of food stamps and other safety-net benefits. Finally, we have a new payroll tax credit which I will discuss in a moment.

We would apply progressive tax rates to the amount of income that is consumed, after subtracting the family living allowance, personal exemptions, and deductions for mortgage interest, charitable contributions, and education expenses.

The tax rates in the USA system are not directly comparable to the rates in the current income Tax Code, however. I know people are going to find that a little hard to understand at first, but the reason why they are not comparable is very important, and that is our payroll tax credit.

THE PAYROLL TAX CREDIT

Under the USA system, after you determine the amount of tax resulting from applying graduated rates to your taxable income, as I have just described, you would subtract from that income tax the amount withheld from your salary for the employee share of your Social Security payroll, or FICA, tax. We think that is a very important feature of the USA system that would reduce the regressive nature of the present payroll tax. The payroll tax, which is absolutely essential to fund Social Security, to fund Medicare, also has become the most regressive part of our Tax Code—the most regressive part of our Tax Code. It does not apply except to the first $60,000 of earnings. Higher income people do not pay it above that except a limited portion on Medicare. But low-income people, medium-income people, are paying a very large percentage of their overall taxes on FICA tax.

In fact, there are literally millions of Americans today that pay more FICA tax than they do income tax.

Our payroll tax credit would be refundable so that if you had more withheld in payroll taxes than you owed in taxes, as is the case for many people, the difference would be refunded to you. Therefore, people with earned income can, in effect, subtract 7.65 percent, the amount of pay withheld for the employee's share of the Social Security and Medicare payroll taxes, from our tax rates.

It is very important for people to understand this. When you see a 20 percent tax rate or 19 percent or 27 percent tax rate under the USA proposal, the 7.65 percent credit has to be subtracted to get the real tax rate—a 20 percent rate under the USA system is, in effect, equal to a marginal rate of 12.35 percent under today's system after you take the payroll tax credit.

The payroll tax is a perfect example of why fundamental tax reform is needed. As my colleague from New York, the ranking member of the Finance Committee, Senator MOYNIHAN, has so frequently and eloquently pointed out, the payroll tax is a very regressive tax. It discourages hiring additional workers, especially lower wage workers. Nobody designed the system that way, of course.

The payroll tax started out at a low rate, but that rate has grown considerably over the years. In the late 1960's and early 1970's, the payroll tax working people paid grew considerably to finance large cost of living increases for retirees that were enacted in years of high inflation. It was increased again in the 1980's, ostensibly to build up a surplus for the retirement of the baby boomers. Unfortunately, as Senator MOYNIHAN has also pointed out, that is not what the surpluses are actually being used for.

So we now find ourselves with a combined employer-employee payroll tax rate of 15.3 percent a very high rate that adds significantly to the cost of labor. The system was set up for one purpose—to provide income security in retirement—but it is actually hurting working people in ways that I am sure were never intended by the authors.

Mr. President, our proposal does not abolish the payroll tax. It does not affect the operation of the Social Security system in any way. What it does do is to offset the unintended negative effects of the payroll tax by crediting the payroll tax against an individual's or business's tax liability under the USA tax. The employer would also get the 7.65 percent credit against their taxes —not a deduction, but a tax credit. Employees get a credit for the FICA taxes against the individual income tax, and employers get a credit for the employer share against the business tax.

So the same amount of revenue will continue to be deposited in the Social Security trust fund. We do not affect that, but the payroll tax will be integrated into the income tax in a way that offsets its regressive nature. This is important for fairness purposes. It is also important so that we eliminate one of the major impediments to people with low skills being hired. Now

people with low skills, minimum-wage-type jobs, the employer has to look very, very carefully before they hire because they are not only paying for the minimum wage, or whatever the wage is, they are also paying another, in effect, 15.3 percent because of these very high payroll taxes that continue to go up.

THE BUSINESS TAX

Mr. President, I will take just a moment on the business side of the Tax Code because I know that Senator KERREY from Nebraska, who has been very involved in this concept for a long time and has been a major help to us, is on the floor and would like to speak. Let me make a few comments about the business tax.

The second component of our new tax code is the business tax. The business tax would work like this: Under the USA Tax System the business would add up its sales receipts during the year, then add up the cost of the goods and services it purchased for use in its business. The cost of these business purchases would be subtracted from the sales receipts. The difference would be subject to a business tax at a flat rate of 11 percent.

I am sure many people will ask, ''Why is the business rate so much lower than current law?'' The answer is that the two rates are really not comparable, because our tax would not be applied to corporate income as currently defined, but rather to a company's gross profits. It is a fundamentally different concept from what we have today, and it applies to all businesses, not just those that are incorporated. I think everyone who studies this business tax needs to understand we have a fundamentally broader base for the business tax so we are dramatically lowering the rate but we are producing the same amount of revenue. We are not lowering the overall proportion that businesses are paying. They are paying the same proportion. But we are able to lower the rate because we are greatly broadening the base, and that needs to be understood.

It is important also to understand that under the USA Tax System, the cost of investment in plant and equipment and inventory would be fully deductible when spent. There would be no need for depreciation schedules. Investment would be deducted up front. Investment creates jobs. New plant and equipment creates productivity opportunities and that increases the income of our people. So that is the behavior we should be encouraging rather than discouraging.

Investment in plant and equipment is what we need in this country, and yet the amortization of these investments over a long period of time under current law discourages businesses from investing as much as they would otherwise.

THE USA TAX PROMOTES U.S. COMPETITIVENESS

Another very important feature is that our USA Tax System puts U.S. companies on the same footing with our competitors. The USA business tax is territorial—meaning it applies to all sales on U.S. soil no matter where the business is headquartered—and it is border adjustable.

We want to encourage exports, and we do in this proposal. We exclude the proceeds from export sales from taxation by rebating the tax on goods exported for sale abroad. And when a company, foreign or U.S. owned, manufactures abroad and sells to the United States market, the company is, through the operations of a new import tax, taxed essentially the same as if the factory were located in the United States. That is border adjustability, the tax is rebated on exports and added to imports, which is exactly the situation American exporters to Europe and Japan face today. We believe our business tax will place American companies and workers on an equal and level playing field.

This is no small matter, Mr. President. The share of our economic output that is exported, and the share of our national income that we spend on imports, have both doubled over the past 25 years. Yet the current U.S. Tax Code has not kept pace with the rapidly changing face of international competition. While our economy has shifted dramatically since this Tax Code was put into effect, our we have not made a comparable shift in our Tax Code. We have simply tinkered with it year in and year out.

Our tax system is a holdover from another era, when international trade was a small component of our economy, when having a tax rule that applied to all American corporations equally was enough. But today American companies do not just compete with each other, they compete globally. And the U.S. Tax Code puts our companies at a disadvantage.

Under the rules of the General Agreement on Tariffs and Trade, or GATT, certain types of taxes can be levied on imports and rebated on exports—border adjustability—while other types of taxes cannot. Our competitors in Europe and Japan have business taxes that can be rebated under GATT, while we do not. We believe the USA business tax is legal under the GATT, since it would work essentially the same way as European and Japanese value-added taxes, which are GATT-legal.

Let me give a simple example of how our business tax applies to exports and imports. If a company has $2.5 million in sales, of which $500,000 are export sales, for purposes of the business tax its receipts would be only the $2 million it had in domestic sales, not $2.5 million. But it will not have to go through a lot of complicated calculations to allocate its production costs between its domestic and foreign sales. All domestic input costs will be deductible regardless of whether the sales are domestic or export sales. Under our proposal there will no longer be a tax incentive to move production overseas.

Conversely, if the facilities used for the production of the $2 million in domestic sales are moved overseas and the $2 million of goods are imported into the United States, an 11 percent import tax of $220,000 will be collected on those goods.

In order to comply with the requirements of the GATT, businesses would not deduct wages. This is a key point, and I know there will be concern about this. But there are two important things to remember. First, our rates are much lower—11 percent —than the rates currently imposed on corporate profits.

The second thing that we need to remember is that under our proposal, the deduction for wages would be replaced by the credit for the employer's share of the Social Security payroll tax—which is 7.65 percent of its payroll—which is the other half of the credit that employees get under the individual tax that I have already described. Businesses would get a credit back on that tax up to the maximum Social Security wage.

THE USA TAX IS DESIGNED TO BE DEFICIT-NEUTRAL

Under our proposal, the individual and the corporate shares of our total revenue would remain the same. We are not trying to shift the tax burden from businesses to individuals, or vice versa. We are not trying to shift the burden from the rich to the poor, or from the poor to the rich. We are not looking for the fellow behind the tree to tax. We are designing this system to produce the same amount of revenue as the current Tax Code. It is not a proposal to cut taxes or raise taxes.

Because of the comprehensive nature of our proposal, and the enormous workload the Joint Committee on Taxation has had this year, they were not able to perform an official revenue analysis or a distributional analysis of this proposal before we introduced it. It is our intention that this system retain the progressivity of the current system, and that it be revenue neutral compared to the current system. Should the official estimates indicate that the bill we have introduced fails to completely meet either of those goals, we intend to work with the Joint Committee to refine this proposal so that we meet both, because we think they are very important.

THE USA TAX IS SIMPLER AND MORE EFFICIENT

The USA Tax System also makes great strides in making our Tax Code simpler and more economically efficient. The USA tax eliminates the need to calculate depreciation year after year, because investments are expensed immediately. We also eliminate the complicated, and in many cases counterproductive, alternative minimum tax, or AMT.

The USA business tax puts debt and equity financing on an equal footing. We treat all forms of businesses the same—corporations, partnerships, and proprietorships.

One of the greatest contributions the USA system will make to simplification is that no longer will people have any reason to seek out unproductive, economically wasteful tax shelters in order to cut their taxes. If you want to lower your taxes, put your money in savings where it can work for all of us—buy a CD, invest in a mutual fund. It might take a few minutes to do your net savings calculation once a year, but the net savings calculation should result more efficient use of our national income, as well as higher economic growth as saving and investment increase.

In an economy with a gross domestic product of over $6 trillion, taxation will never be a completely simple affair. But because the USA Tax System eliminates the need for rules against sheltering income in corporations, and because it is based on cash rather than accrual accounting, it promises major advances in simplicity and clarity.

Under the USA system, we believe whole volumes of Tax Code complications would fall away into welcome oblivion. The tax shelter industry would shrink and compliance costs would plummet. All income would be treated alike. The key is what they would do with their income. If it is reinvested, then the taxation on it would be deferred. It is not reinvested, if it is consumed, then ordinary tax rates would apply. Those rules would be the same for everyone; for the factory worker and for the investor.

There would be no more need for fights over capital gains, investment tax credits, individual retirement accounts, and other targeted incentives for saving. The USA Tax System eliminates these issues because it offers a blanket deduction for personal saving and business investment.

And under the USA system, taxpayers will not have to keep track of the basis of their newly purchased savings assets such as stocks and mutual funds, the way they do now, and most taxpayers will not have to worry about the basis of savings assets they already hold. Finally, the USA tax system will not take a whole new bureaucracy to administer.

THE USA TAX SYSTEM IS A REVOLUTIONARY CONCEPT

In a way, the USA Tax System could be described as simply taking the current tax system and adding a deduction for savings. That may be the major change most people would notice. But the USA Tax System represents a much more profound change in its effects than in its form.

For any given level of income, those who save and invest more will pay lower taxes. The taxpayers in the top bracket would pay roughly the same total amount of taxes they do now. But within that bracket, there will be those who pay less and those who pay more. The same will hold true whether you are in a higher or a lower tax bracket. That is the essence of our proposal. Those who help our economy, help create jobs, and boost productivity by saving and investing, will pay less than their neighbors with similar incomes who do not.

We are basically going to tax people on what they take out of the economy—above a tax free level for necessities—rather than what they put into the economy by working and saving. Our proposal represents a revolution in the philosophy of the income tax system. But we do not have to make major changes to the system already in place to administer the tax system to make our proposal work.

By contrast, a consumption or expenditure tax, such as a value-added tax, would impose enormous administrative expenses on American businesses, without the progressivity, and without creating the same incentive to save and invest, that the USA Tax System has.

The distinguished economist and former chairman of the Council of Economic Advisers, Murray Weidenbaum, very clearly summarized the benefits of moving to a tax system that, in his words ''puts the fiscal burden on what people take from society—the goods and services they consume—rather than on what they contribute by working and saving.''

Professor Weidenbaum argues that we need a Tax Code that promotes saving because saving is the seed corn for economic expansion. The money you save does not just sit there, it works for all of us by being invested. Increased savings and investment generates more production of goods and services, more employment, and a higher living standard for all of us.

A tax system that exempts saving raises the same amount of revenue as the existing tax system, with far less damage to the economy. We get a faster growing economy with more people working, fewer people needing public assistance, and the increased revenues that come from a growing tax base instead of from raising tax rates.

CONCLUSION

Mr. President, this is a revolutionary concept. The advantages are, I think, very, very important to our country.

The first advantage: This proposal will increase national savings by eliminating the bias in the current Tax Code against savings, without increasing the budget deficit. Increasing the pool of private savings will in turn allow increased investment at lower cost, which will increase the productivity of our workers.

Second, it will level the international playing field for U.S. companies, and promote U.S. exports of domestically produced goods, by rebating the business tax on goods sold for export, and it will equalize the tax treatment of American-made and imported goods by having foreign companies pay their fair share of taxes, just as American exports are taxed when they are sold in foreign markets.

Third, it will make our Tax Code more understandable and more efficient which will save, I believe, both millions of dollars and millions of hours preparing individual and business tax returns, and it will do so without sacrificing the principle of fairness in allocating the tax burden.

Fourth, the USA tax credit for the employer share of payroll taxes will help create jobs for workers who might not otherwise be hired by reducing the current disincentive to hire low-skill workers that results from the regressive payroll tax which applies to the entire wage of lower paid workers but to only part of the wage of higher paid workers.

Finally, we believe it will foster greater personal responsibility by clearly showing the costs and benefits of saving versus consuming.

Today, Mr. President, every family in America, if they are saving money for a washing machine, an automobile, or a college education, has to pay taxes before they save. We would give the people in the lower and middle-income brackets who need to save, but who think they cannot afford to save—and who do not have any incentive to save under the current Tax Code, because any money they do save out of their after-tax income is taxed again when it earns interest or dividends—we would give them a way to save. I believe our proposal will help all American families save, and that as a result, all of us will be better off.

The current tax system is broken and, in my opinion, it cannot be fixed. In a very real way, it has aided and abetted our irresponsible tendency to live beyond our means. Our current Tax Code must be abolished and replaced.

We must being anew. The USA Tax System provides a way to eliminate the cynical complexities, the special subsidies, the crippling biases present in the current Code. By enacting real reform of the tax system, this Congress can take a giant step toward securing our future.

Mr. President, I thank the Senator from New Mexico. Without his leadership there would have been no Strengthening America Commission, there would have been no tax proposal today. He has been a key player in this from the very beginning. He is a pleasure to work with. I look forward to working with him on this proposal, as well as on his important responsibilities on the other side of our national economic challenge, and that is getting our deficit under control, which also directly drains our savings.

Mr. President, I yield the floor.

Mr. KERREY. Mr. President, it is awfully difficult to estimate the economic impact of tax law. I must say, it is a lot easier for us to estimate the political impact of tax laws because we hear from a whole range of interest groups constantly that are concerned about preserving some deduction or perhaps expanding some deduction. So it is genuinely difficult to estimate what the economic impact is going to be,

though it is easy to estimate what the political impact is going to be, of various changes in the law.

What is not difficult with this particular piece of legislation is to estimate what the impact is going to be upon American families who desire to save and on American businesses who are willing to make job-creating investments.

Mr. President, this piece of legislation, though I am quite certain there will be critics who will point out defects in it—indeed, there may be plenty of room for improvement of this legislation—there is no question that this tax law change is allowed, in my judgment, by the rather dramatic change in the political situation last November, which has permitted us, the Congress, to begin to consider things that had previously been off limits. There is no question, in my judgment, that this piece of legislation would have the impact of simultaneously allowing American families to save more by providing a powerful incentive for them to save, and it would enable American businesses to make job-creating investments by enabling them to expense off the cost of those investments.

Let me say, Mr. President, as a part of this debate, that I am continuing to be one of the diminishing numbers of the Senate that is a Member of the Democratic Party and should assert that as a Member of the Democratic Party, I do believe that labor is superior to capital. By that, I mean you must have people who are willing to work before the capital is worth anything; capital without labor is worthless. So I believe in the superiority of labor, and I believe in the training of labor, and I believe in universal education and the preparation of people so that they have the skills needed to compete, so they have the skills needed to earn the living that they desire.

But I do not believe in declaring war on capital, nor do I believe in declaring war on the wealthy. Indeed, it seems to me that the heart of the Democratic message ought to be that equal opportunity means providing every single American, regardless of their status in life, an opportunity to become wealthy in this country.

Unfortunately and regrettably, Mr. President, there is no shortcut to becoming wealthy. There is no easy way, no free lunch to do it. In order to become wealthy, one must acquire wealth. And in order to do that, one must save. Occasionally, there are people who hit the lottery or some bonanza of some sort. But, generally speaking, the acquisition of wealth occurs as a consequence of people being willing to defer gratification to set aside something they would like to purchase today in favor of the desire to purchase something later.

I remember, Mr. President, in 1988, during my first campaign for the U.S. Senate—I will not tell the gentlemen's name—standing at a farm site at an event thrown in my behalf, standing next to a farmer approximately a generation older than I, along with a friend of mine who is a salesman. He was talking to this farmer and he said, ''It is well known that you are one of the wealthiest men in the country. How did you get so wealthy?'' He said, ''It is real simple. I do not spend my money.'' And in making an observation about this gentleman who was a salesman, he said ''You are wearing very nice clothes that cost you a lot of money.'' The salesman said, ''I have to in order to do my work.'' The farmer said, ''You will notice that I am wearing a very attractive shirt that I bought for a dollar at your garage sale last fall.''

Mr. President, in order to acquire wealth, individuals must be willing to save. There is no short cut to it. Senator SIMPSON and I will, in the next few days, I hope, if we can get the bill language put together, present legislation that will reform a program that is supposed to be a savings program but it is not, and that is our Social Security system. One of the things I will do in the process of describing the legislation is describe the magic of compounding interest rates.

Mr. President, there are three variables that will determine the impact of your savings and your acquisition of wealth.

Variable number one is the length of time that you contribute to that savings account.

Variable number two is the amount of money you contribute.

Variable number three is the rate of return.

The most important variable is number one, the length of time that you contribute. An individual that contributes $75 a year starting at age 20, over a 50-year period, will have more at the end of that 50-year period than somebody who contributes $1,500 a year if they wait until they are age 50 to start. I am 51 and, generally, it occurs to you when you are about 50 that, Oh, my gosh, I am going to retire in 15 years, I have to start saving money. The dilemma is that if you wait until you are 50, you are giving up the significant impact of compounding rates.

Let me give a little mathematics for the listening audience. Mr. President, if you got a 10-percent real rate of return by investing in equities, which is not that difficult to do, that would mean that you would have a compound every 7.2 years. Thus, if your parents took $1,000 and opened a savings account for you when you were born, you would get 10 compounds on that thousand dollars that would be worth a million dollars by the time you reach age 70. This piece of legislation, in my judgment, Mr. President, would change the culture and attitude of savings in the United States of America.

Mr. President, to be clear, there are not very many situations where the interest of the individual and the interest of the Nation intersect, where they are the same. As much as we talk about it being the same, there are very few situations where that is the case. With savings, there is an intersection. It is in the interest of American families to acquire and accumulate wealth. It is in the interest of the Nation to do the same. Unless both the individual has an incentive to save and the Nation has the discipline to save, then the standard of living of the United States of America simply will not rise.

Mr. President, I will identify four features that I think unquestionably will have a dramatic and powerful and positive impact on the United States of America.

First, this piece of legislation permits a full and unlimited deferral of the taxation of savings. A clear signal, unequivocal. There would be no need to consult with an accountant. You would know precisely that if you save money, you can defer taxation on that savings.

Second, it allows wage earners an offset for the employee portion of the payroll tax. That is a very powerful incentive. The payroll tax is extremely regressive and very often uncalculated when people are politicians and are looking at the overall rates of taxation. It is an extremely regressive tax, difficult for individuals, and very often a barrier for businesses to hire new employees.

Third, Mr. President, it allows those individuals who are willing to roll the dice, to sign their name on the dotted line to put some savings into land, building, equipment, which will hire and employ Americans. It allows them, in the operation of their business—a risky venture in the 1990's—to expense every single one of their real investments.

Fourth, Mr. President, it enables the United States of America to exclude export sales from taxation imposed, as well a tax on imports. Every single one of our industrial competitors does precisely the same thing. They have to be laughing under their breath as they look at the taxation system of the United States of America that puts our workers at a competitive disadvantage, and puts our businesses at a competitive disadvantage as well.

Mr. President, I am pleased to join the distinguished Senator from New Mexico and the distinguished Senator from Georgia as an original cosponsor. This is a piece of legislation that has been several years in the making. It is a very thoughtful piece of legislation. It has been well thought through. I attended a number of these meetings long before the issue was popular. The Senator from New Mexico and the Senator from Georgia were leading this effort. I hope that, with the new permission granted in this new Congress, this kind of legislation, serious legislation, will not only be considered but will be enacted as soon as possible. Mr. President, it will be good for American families and good for American workers, and it will be good for American businesses and, as a consequence of all three, good for our country.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself 5 minutes, and Senator NUNN would like 5 to wrap this up, so I will yield 5 to him.

Mr. President, I would like Members of the Senate and those interested in this legislation to know that we set some very difficult parameters for those who helped us draft this. We said we want to replace the income tax system with a whole new system, and we want to replace it both in substance and in dollars. We want the exact same amount of revenue to come in from this new code as before. No more, no less. We want it to be neutral. It was a pretty hard mandate imposed on those who are doing the modeling, the rate making, and other things.

Second, we said to them that we have a tendency in the United States to judge progressivity based on things we understand. So we took progressivity to mean that each 20 percent of the American taxpayers—frequently called quintiles—the low 20 and the high 20 would pay the same proportion of the total tax when we were finished with this as the current code—another very difficult and onerous instruction, but we did those two things because we wanted to prove that you could totally overhaul the income tax structure and get the same amount of revenue from corporations and businesses and the same amount from each quintile —that is, 20 percent of the American taxpayers in a progressive manner.

Now, obviously, we have followed that rule religiously. Thus we have some guidelines, some milestones, and proof that it can be done.

On the other hand, we suggest to the tax writers in the various committees, including our Ways and Means Committee, our Finance Committee, and the Ways and Means Committee in the House, that they might very well, in trying to adopt this major concept changes that are incorporated in detail, they might want to look at some variance in those. But we wanted to send it to them and say we have living proof that it can be done and yet tremendously encourage savings and investment.

The second point. All of the modeling and estimating was done on a basis of static economics. That is, we used the conservative—acceptable to the CBO and everyone else—approach to the tax yields.

Not for a minute do Senator NUNN and I believe that the savings, that the tax yields over time will be precisely the same. As a matter of fact, we believe that in the future years—because of the savings and investment, we might indeed have slightly less tax receipts in early years and very significantly higher ones in future years with better jobs.

We do not take credit for that in the modeling and estimating. We do it on this neutral, conservative basis.

Having said that, I want to say to my friend, and certainly he is Senator NUNN's friend, Senator KERREY from Nebraska actually hit right at the heart of our proposal with his four summary items.

There is no question that this is a totally new concept. We think it is better. As I view it, when people sit around and decide what they are going to do with their earnings, currently there is no real incentive to look at savings and investment because we pay double tax on both—the incentive is against it instead of in favor of it.

We only want a neutral arena. We understand Americans must spend their money. We understand we will be asked, ''Are you sure you will not hurt the economy by causing Americans to spend less?'' We think, over time, the pluses are our way.

All we want to do is put that on a level playing field. As we sit around and talk about disposable income we want people to look at the unlimited IRA's that are part of this, or starting your own investment money and leaving it there.

In conclusion, the concept is that the savings and investment pool is good for America. The bigger it is, the better for our working people, for jobs and for our children. So if the money is left there in the savings or investment pool, you do not bring it back into your income and spend it, people do not pay taxes. It is deferred.

This seems to Washington to be rather revolutionary when coupled with the corporate advantages with our border adjustable. Clearly, American companies will be given a better opportunity to use more of this savings pool here in America, which many will ask, if we are going to have all these savings and investments, will American companies get a fair shot?

What we will say, I think, is, ''Absolutely yes.'' We cannot keep all of our money at home, but when we create the advantages for American corporations and take away the disadvantages of engaging in world markets, I believe we will keep much of our money here at home under this proposal.

The PRESIDING OFFICER. The Senator from Georgia has 9 minutes 40 seconds remaining.

Mr. NUNN. Mr. President, I want to thank a few people, and I inadvertently may not name everyone. There have been many people involved in this effort.

On my staff, Mike McCord and Rocky Rief; on Senator DOMENICI's staff, Bill Hoagland and Denise Ramonas.

I would like to thank David Abshire and his entire team at CSIS—Dick Fairbanks, Debbie Miller, and John Yochelson—who worked on the Strengthening of America report, and the many people who have worked so hard to help us develop the concept we endorsed in that report into the detailed proposal we are introducing today.

Barry Rogstad and John Endean of the American Business Conference have helped immensely. Barry was on the commission and we asked him to work with us after we came out with this report. Ernest Christian of the Center for Strategic Tax Reform, who has been very, very, instrumental in helping us turn this overall concept in a working tax system, because he has great expertise in the tax area. I also want to thank Rudy Penner, the former Director of the Congressional Budget Office, who has done a great deal in coming up with rate structure and conceptual framework of the USA tax, and Lin Smith and Paul Burnham who are part of Rudy's team at KPMG Peat Marwick.

Barry, Ernie, and Rudy in particular have spent countless hours helping Senator DOMENICI and I develop this proposal. These key players deserve great credit. I also want to thank Bob Lutz, Paul O'Neill, Barbara North and all the members of Alliance USA for their support.

While he has not reviewed the legislation we are introducing today, and may not necessarily agree with everything in it, this proposal has benefited from the pioneering conceptual work in this area over the past 20 years by David Bradford.

The cash-flow business tax component of our proposal has also built on the foundation of several years of work by our two distinguished friends and former colleagues, Senator DAVID BOREN and Senator JACK DANFORTH, and their very able staffers, Beth Garrett, and Mark Weinberger, who also served as Chief of Staff of the Kerrey-Danforth Bipartisan Commission on Entitlement and Tax Reform.

I would also like to thank Jim Fransen and Mark Mathiesen of the Senate Legislative Counsel's office, and the staffers from the Joint Committee on Taxation, especially Jon Talisman, Joe Mikrut, Tom Bowne, and Tom Barthold, who have spent many hours working with us on this legislation. I know that the Legislative Counsel's office and the Joint Committee have both been extremely busy this year, and probably will continue to be, given the large numbers of both incremental and fundamental tax reform proposals being introduced, marked up, and debated this year.

I have no doubt that if we and they had the luxury of having all the time needed to produce a bill that contained every detail necessary to implement such a comprehensive reform as the USA Tax System, we would be able to improve it still further. While all these individuals have shared their time and talents with Senator DOMENICI and I and our staffs, and we have spent hours and days and weeks and months working on this proposal, I would be the first to say that the legislation we are introducing today is not complete, it is not perfect, it is not the last word on tax reform that will ever need to be written.

But we believe it is important to put our proposal—which I believe is far more detailed than any of the other reform proposals being discussed—before the American people at this time so that the American people can learn more about our proposal, and so that we can learn from them. We believe our proposal can and will be further improved as people study it and debate it. In the end, we believe we can make a compelling case why our USA proposal best serves the needs of the American people, and addresses the competitive realities of the global marketplace, for the next century.

Let me see if I can summarize the USA tax proposal in a very brief time. The fundamental premise is that the United States has a serious savings problem. The private savings in this country have continued to go down, down, down, while the Federal deficit has eaten up the savings by going up, up, up.

We have the lowest savings rate in the industrial world, as Senator KERREY from Nebraska and Senator DANFORTH from Missouri pointed out so clearly in their study, as we pointed out in the Strengthening of America Report, and as many other commissions, including Warren Rudman, Paul Tsongas, and PETE PETERSON of the Concord Coalition, who have done so much work in that area, have reported in the work they have done on trying to reduce the Federal budget deficit.

The fundamental premise is we have much too low a rate of savings, and we have to do something about that. The other fundamental premise is that higher savings is directly connected with real income, because higher savings produces more investment, higher productivity and improved competitiveness, better jobs, and a higher standard of living for our American workers.

The goals of our tax reform effort is to promote savings and investment; to ensure fairness while we are doing that; to not increase the budget deficit, which is enormously important; to strengthen America's competitive position—and I have talked about that at length this morning on the export/import matter—to make our Tax Code as simple and as efficient as possible in a complicated, complex world; to give individual Americans at all income levels a chance to save, to invest for their future, for their children's future, and to raise the standard of living for themselves and their families; and, finally, to produce the revenue required for the U.S. Government with the least detrimental effect on our economic growth.

The advantages of the USA tax system are many. I will try to capture those very briefly. No. 1, we eliminate the bias against savings in the current Tax Code.

No. 2, we do not increase the budget deficit, we break even if there is adjustment required. That is the fundamental premise. We will adjust to accommodate whatever tax estimates come forward.

The third point is increase the national savings and thereby we give ourselves an opportunity to increase investment and to increase productivity and real income.

No. 4, we help level the international playing field for U.S. business by not taxing exports and by having the same tax on imports as on domestically-produced goods.

This equalizes the tax treatment with our competitors. Both Japan and Europe have a value-added tax where they rebate on exports and they tax our imports. So we are doing the same thing that they are doing, equally, and leveling the playing field. It gives our American producers a level playing field with workers abroad. That is enormously important.

Finally, it makes our Tax Code more understandable and more efficient.

The other dimension that I emphasized this morning that I think bears repeating, is that this is a major step toward giving unskilled people at the bottom end of the economic ladder a chance to get started, to get the foot on the bottom rung of the economic ladder, and to get a job, because we basically merge the FICA tax, the Social Security, with the income tax and we give full credit back to employees for the portion of that tax they paid, even if it is refundable. Even if their FICA tax exceeds the amount they owe on income tax, they will get a refund.

So this eliminates the most regressive feature of our current tax system and removes a very large obstacle to employment.

Mr. President, we welcome constructive criticism. We know that we do not have a perfect Tax Code—there is no such thing. We understand that there are going to be changes that need to be made. We understand there are things we have overlooked. We welcome suggestions. We welcome constructive criticism. I know we will have a lot of debate and discussion on this proposal and I am delighted, with my friend from New Mexico, as partners, to jointly send this proposal to the desk and ask it be reported and properly referred.

I also ask the cosponsors be listed: Mr. DOMENICI, introducing the bill with myself, Senator KERREY, and Senator BENNETT—so those will be the cosponsors. I believe Senator LIEBERMAN has indicated an interest and I believe later he would like to be added as a cosponsor, but we have not yet heard from him. He has been enormously interested in this proposal.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank the Senate for the time it gave Senator NUNN and me this morning. Both of us have had opportunities in our Senate careers to do some exciting things for our country, but I think we both agree that if we can change the tax laws of the land to accomplish the goals and purposes described here and get the Federal deficit down where in a few years it would be zero, I think we would be rather satisfied that these would be major accomplishments in our time here in the U.S. Senate.

Does my colleague not agree?

Mr. NUNN. I certainly agree with my friend from New Mexico.

Mr. President, I ask this legislative proposal also be printed in the RECORD.

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

Mr. NUNN. Mr. President, I yield the remainder of our time.

Mr. DOMENICI. Yes, we yield the remainder of our time.

● Mr. LIEBERMAN. Mr. President, I applaud the efforts of the Senator from Georgia and the Senator from New Mexico. They have spent not weeks, not months, but years in developing this USA tax proposal.

It should come as no surprise that this proposal was such a long time in the making since it replaces our current individual and business income tax system. This was an enormous task. But each year, American taxpayers face an enormous task of their own—trying to make sense of the dazzlingly unwieldy and frighteningly complex U.S. Tax Code.

In addition to being complicated, our current Tax Code does little to encourage savings and investment and this is in a time when real incomes are down, making Americans even less certain about their economic futures.

Our current Code discourages the savings that create the savings pool from which investments can be made. In fact, our Code penalizes savings not once, not twice but three times—first by taxing that money before it can be invested, second by taxing it again as corporate profits, and third by taxing that money when it is distributed as dividends to shareholders. By any yardstick, the savings rate in this country is at a near-crisis point. Our falling private savings combined with our rising deficits have left our net national saving—the amount available for investment in job-creating activities—at record lows. That net national savings has fallen from about 10 percent of GDP in 1973 to less than 2 percent in 1993.

As the Senator from Georgia has said, ''by definition what we do as individuals to invest in the collective future of our country comes from our savings.'' I agree with that observation and I would add to that observation by saying that by definition what we should be doing as the creators of the Tax Code is to remove the disincentives in our Code that discourage that investment.

The proposal that Senators NUNN and DOMENICI are introducing today clearly provides an incentive for that saving that we as individuals, and we as a country, so desperately need. This proposal imposes no taxes on savings—

until those savings are spent. It also maintains a few important deductions like the home mortgage deduction and the charitable contribution deduction. In addition the proposal adds a critically important deduction to help families pay for the cost of higher education—as a way to encourage this all-important human investment. And it is significant to note that the proposal allows a full credit for the 7.65 percent of wages that workers pay into the Social Security system.

This proposal also goes to great pains to ensure fairness and progressivity. It allows for a living allowance as well as the deductions and credits I have outlined—for a family of four, the living allowance would mean that over $17,000 a year in spending would be tax exempt. In addition, the figures that have been run on this proposal show that it would actually decrease the tax liability for a family making less than $50,000 and leave the tax liability for those making between $50,000 and $100,000 unchanged. In addition, the tax liability of those making between $100,000 and $200,000 would increase by 3 percent and would increase by 4 percent for those making over $200,000. It also ensures that the great majority of people who have been saving all along will not be penalized when they withdraw those savings in their retirement.

On the business side, this proposal encourages capital investment by providing for unlimited expensing and encourages the reinvestment of capital gains by deferring taxes on those gains if those gains are reinvested. And while it increases the overall pool of what is subject to the business tax, the proposal also lowers the tax rate overall on businesses.

This proposal holds out real promise and I am grateful that my colleagues from Georgia and New Mexico have devoted so much time and effort to ironing out the thousands of necessary details and putting this proposal into legislative form. I look forward to discussing the proposal in greater detail with them and, from what I have seen, their proposal certainly moves us a big step forward toward a tax system that is simpler and fairer as well as a system that increases our capacity as a country to grow and create new jobs.●

By Mr. KOHL (for himself and Mr. SPECTER):

S. 724. A bill to authorize the Administrator of the Office of Juvenile Justice and Delinquency Prevention Programs to make grants to States and units of local government to assist in providing secure facilities for violent and chronic juvenile offenders, and for other purposes; to the Committee on the Judiciary.

JUVENILE CORRECTIONS ACT

● Mr. KOHL. Mr. President, I rise to introduce the Juvenile Corrections Act of 1995, which I am proud to sponsor with my friend and colleague, Senator SPECTER. The act dedicates approximately 10 percent of the 1994 Crime Act's adult prison resources to the construction and operation of State and local juvenile corrections facilities.

Juvenile violence, as we all know, is at the heart of the crime problem in America. Every 5 minutes a child is arrested for a violent crime in the United States; every 2 hours a child dies of a gunshot wound. Unfortunately, there is good reason to believe that this problem may get worse before it gets better. Demographics tell us that between now and the year 2000, the cohort of children between the ages of 14–17 will increase by more than 1 million. The likely result: a serious increase in the number of violent juvenile offenders in the coming years—above already unacceptable levels.

Despite this state of affairs, the Federal Government has treated juvenile corrections as the poor stepchild of the Federal anticrime effort. The 1994 Crime Act contained billions of dollars for policing and adult prisons at the State and local level, but no significant program to help States alleviate the increasing burdens on their juvenile corrections systems.

These burdens are real and substantial, Mr. President. A recent Department of Justice survey indicated that the majority of juvenile corrections facilities nationwide are seriously overcrowded and understaffed—in short, bursting at the seams. Between 1979 and 1991, juvenile detention centers faced a 30 percent increase in daily average population—a gain of about 65,000 youthful offenders. As a result of the demographic trend we highlighted above, we will probably see even worse overcrowding in the future.

Mr. President, the consequences of overcrowding should trouble us all. In part due to the combination of overcrowding and understaffing, juvenile offenders attacked detention facility staff 8,000 times in 1993. In countless U.S. cities, juvenile offenders who require detention are nonetheless released into the community because of a lack of space. And finally, it is clear that overcrowding breeds violence and ever more violent juvenile offenders who, when eventually released, are much more dangerous to society than when they were first institutionalized.

For all these reasons, we introduce today the Juvenile Corrections Act. Our legislation provides crucial assitance—$770 million in funding over 5 years—to State and local governments for the construction, expansion, and operation of juvenile corrections facilities and programs. And, I should note, the act has no impact on the deficit, as it draws its funding from the $8 billion adult corrections component of the 1994 Crime Act.

Mr. President, we cannot afford to turn a blind eye to the juvenile corrections problem. So I hope my colleagues will join with me and Senator SPECTER to enact the Juvenile Corrections Act. In light of the spiralling juvenile violence problem, we believe it makes good sense to dedicate roughly 10 percent of the crime act's adult prison resources to State and local juvenile corrections.●

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. AKAKA, Mr. DORGAN, and Mr. WELLSTONE):

S. 725. A bill to amend title 38, United States Code, to extend certain authorities relating to the provision of community-based health care by the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS' COMMUNITY-BASED CARE ACT

Mr. ROCKEFELLER. Mr. President, VA, like other Federal departments, is taking a hard look at its programs in order to improve the way it operates, and in so doing, improve the services it provides to its beneficiaries—in the case of VA, veterans and their families. I am committed to providing VA with the legislative authorities and management flexibility needed to renew its health care system to meet the current and the future needs of our Nation's veterans.

One of the steps VA must take is to revamp its infrastructure to use the most clinically appropriate, most effective, and most efficient approaches to health care delivery available in this country. VA plans to restructure by shifting from a system which is heavily oriented toward inpatient hospital care, to a system which provides more care in outpatient and noninstitutional settings, such as care in the community and in veterans' homes.

The bill I am introducing today is designed to support VA's reengineering efforts by extending existing authorities to provide health care to eligible veterans in community settings. I am proud that Senators DASCHLE, AKAKA, DORGAN, and WELLSTONE have joined with me as original cosponsors.

SUMMARY OF PROVISIONS

Mr. President, this legislation contains amendments to title 38, United States Code, and to various public laws that would:

First, extend until December 31, 2000, VA's authority to contract with non-VA halfway houses for treatment and rehabilitation services for veterans with substance abuse problems.

Second, extend until December 31, 2000, VA's authority to conduct a pilot program of noninstitutional alternatives to nursing home care.

Third, reauthorize until December 31, 2000, VA's Homeless Chronically Mentally Ill Program, which provides outreach and contract care in non-VA facilities for homeless veterans with severe mental illnesses.

Fourth, reauthorize until December 31, 2000, the Compensated Work Therapy/Transitional Residence Program for certain veterans, including those who suffer from substance abuse problems and homelessness.

Fifth, extend until December 31, 2000, VA's authority to enter into enhanced-use leases.

BACKGROUND

Clearly, veterans who are eligible for VA health care services need access to a full range of institutional and noninstitutional services to meet their medical and health-related needs. Ideally, every patient would be provided the most appropriate type and level of care needed, and that care would be delivered in the most appropriate and least restrictive setting.

TREATMENT FOR ALCOHOL OR DRUG DEPENDENCE OR ABUSE DISABILITIES

This legislation would extend VA's authority to contract with non-VA halfway houses for treatment and rehabilitation services for veterans with substance abuse problems. Current law authorizes VA, through December 31, 1995, to provide veterans who are suffering from substance abuse disabilities with care on a contract basis through community halfway houses. Such community facilities provide a supervised, substance-free environment, maintain residents' health, and help residents improve their independent living and social skills.

This contract program provides an important step in a veteran's transition from inpatient substance abuse treatment and detoxification to independent living in a community. The contract program currently operates at 106 medical centers; 6,300 veterans were treated through the program in fiscal year 1994. First authorized in 1979, the program has been an integral step in the treatment of substance abuse for veterans.

NONINSTITUTIONAL ALTERNATIVES TO NURSING HOME CARE

This legislation would extend VA's authority to provide health and health-related services for veterans needing long-term care. Under current law, this program will expire on September 30, 1995.

Authorized by Public Law 101–366 and expanded by Public Law 103–452, the program is targeted to those veterans who, but for the receipt of these services, would need to be placed in a nursing home. Homemaker and home health aide services furnished under this program provide veterans with assistance in performing fundamental activities of daily living, such as eating, bathing, dressing, transferring, and other personal care activities. VA staff provide the case management, and public and private sector agencies deliver the services in veterans' own homes. Veterans can continue to live at home and receive, at less cost to VA and to the taxpayer, the same type of services that would otherwise be provided in a hospital or nursing home.

With a budget of $10 million in fiscal year 1994, 110 VA medical centers purchased homemaker and home health aide services for more than 3,000 veterans.

HOMELESS CHRONICALLY MENTALLY ILL PROGRAM

This legislation would reauthorize for 5 years the Homeless Chronically Mentally Ill [HCMI] program. Under current law, the HCMI program will expire on September 30, 1995.

The HCMI program, one of the two major VA homeless programs, authorizes VA outreach workers to contact homeless veterans in the community, assess and refer veterans to community services, and place eligible veterans in contracted community-based residential treatment facilities. The HCMI program was enacted in 1987 as a pilot program with a budget of only $5 million. Since that time, the program has grown significantly. In fiscal year 1994, it had a $24.5 million budget and operated out of 57 medical centers in 31 States and the District of Columbia. Similar to the contract program for veterans with chronic substance abuse problems, the HCMI program continues to prove its worth.

COMPENSATED WORK THERAPY/TRANSITIONAL RESIDENCES

This legislation would reauthorize through fiscal year 2000 a demonstration program that provides veterans with compensated work therapy and transitional residence [CWT/TR]. The current authority for this program expires on October 1, 1995.

Currently, section 7 of Public Law 102–54, enacted in 1991, authorizes VA to conduct a CWT/TR demonstration program with two components. Under one component, VA is authorized to purchase and renovate no more than 50 residences as therapeutic transitional houses for chronic substance abusers, many of whom are also homeless, jobless, and have mental illnesses. Under the second component, VA is authorized to contract with nonprofit corporations which would own and operate the transitional residences in conjunction with existing VA compensated work therapy programs.

Under both components, veterans pay rent from money earned by working for private businesses or Federal agencies which have contracts with VA to employ the veterans. Once the residence is fully renovated and operational, the rent collected from the veterans participating in the program is intended to pay the operating costs of the residence.

Thirty-six transitional residences run by VA were fully operational in 1994. Fourteen additional residences are currently in the process of being purchased or of activating operational beds. A preliminary VA evaluation of the existing programs indicates that well over half of participating veterans complete the program and have enjoyed substantially better sobriety, employment, and housing status than before entering the program. The analysis notes that, while these programs need additional study, they seem to have enjoyed some initial success.

While VA has implemented the first component of the demonstration program as originally envisioned by the Congress, I note that VA has only implemented the second component of this program, which requires VA to enter into agreement with nonprofits to purchase and run the transitional houses, as part of its HCMI program. Of the 29 VA contracts with nonprofits for the HCMI program, VA provides compensated work therapy at 27 of them. I remain concerned that VA has not formally implemented the second component of the demonstration program.

ENHANCED-USE LEASE AUTHORITY

This legislation would extend the authority for VA to enter into enhanced-use leases for an additional 5 years. This authority will expire on December 31, 1995. Under current law, the Secretary has the authority to enter into enhanced-use leases under which another party can use VA property so long as at least part of the property will provide for an activity which contributes to the mission of the Department and enhances the use of the property.

This program was enacted in 1991 as a test program in an effort to fund cost-effective alternatives to the manner in which VA traditionally acquired and managed its facility and capital holdings. The program was based on the concept that by out-leasing underused VA property on a long-term basis to non-VA users for uses compatible with VA programs, the Department would be able to obtain facilities, services, or money for VA requirements that would otherwise be unavailable or unaffordable.

According to VA, the initial results of this program are promising, and have significantly reduced costs to the Department and provided corresponding benefits to the local community. For example, through enhanced-use leasing, a Veterans Benefits Administration regional office is scheduled to open at the VA Medical Center in Houston, TX, this spring, at 56 percent of the cost initially appropriated for traditional acquisition, plus an annual income to VA. This summer, the Department is expected to open a new child care facility at the Washington, DC, VA Medical Center operated by a private child care provider; child care will be provided at a discounted cost to VA employees—all at no cost to VA.

The Department is pursuing other enhanced-use leasing projects, including child care projects for nine sites based on the Washington, DC, VA Medical Center model; parking garages at VA medical centers in St. Louis (John Cochran), Chicago (West Side), and Pittsburgh; training on emergency procedures at the West Palm Beach VA Medical Center; a Managed Care Clinical Research and Education Center at the Minneapolis VA Medical Center; new research space, a new outpatient clinic, and added parking at the Durham VA Medical Center; a new energy facility at the North Chicago VAMC; shared energy agreements at various VAMC's; and potentially, a continuous care retirement community at the Murfreesboro VAMC.

CONCLUSION

Mr. President, many veterans who have suffered from chronic illnesses

have, in the past, had little, if no, choice as to where they could live and receive the long-term care they needed. Fortunately, there are more options today, including receiving care in one's own home. A long-term illness is no longer synonymous with institutionalization. If medical, health-related, and social services are available, it can make the difference between a veteran being able to live his or her last years in the comfort of his own home, or having to be placed in an institution. Among other goals, the Veterans Community-Based Care Act of 1995 will help make this possible for the men and women who have worn the country's uniform.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 725

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Veterans Community-Based Care Act of 1995''.

SEC. 2. EXTENSION OF EXPIRING AUTHORITIES RELATING TO COMMUNITY-BASED CARE.

(a) ALCOHOL OR DRUG DEPENDENCE AND ABUSE.—Section 1720A(e) of title 38, United States Code, is amended by striking out ''December 31, 1995'' and inserting in lieu thereof ''December 31, 2000''.

(b) NONINSTITUTIONAL ALTERNATIVES TO NURSING HOME CARE.—Section 1720C(a) of such title is amended by striking out ''September 30, 1995,'' and inserting in lieu thereof ''December 31, 2000,''.

(c) COMMUNITY-BASED RESIDENTIAL CARE FOR HOMELESS CHRONICALLY MENTALLY ILL VETERANS AND OTHER VETERANS.—Section 115(d) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 1712 note) is amended by striking out ''September 30, 1995'' and inserting in lieu thereof ''December 31, 2000''.

(d) DEMONSTRATION PROGRAM OF COMPENSATED WORK THERAPY.—Section 7(a) of Public Law 102–54 (38 U.S.C. 1718 note) is amended by striking out ''fiscal years 1991 through 1995'' and inserting in lieu thereof ''the period beginning on October 1, 1990, and ending on December 31, 2000''.

SEC. 3. EXTENSION OF AUTHORITY FOR ENHANCED-USE LEASES OF REAL PROPERTY.

Section 8169 of title 38, United States Code, is amended by striking out ''December 31, 1995'' and inserting in lieu thereof ''December 31, 2000''.

ADDITIONAL COSPONSORS

S. 256

At the request of Mr. DOLE, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 356

At the request of Mr. SHELBY, the name of the Senator from Pennsylvania [Mr. SANTORUM] 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. WARNER, the name of the Senator from Kentucky [Mr. FORD] 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. 457

At the request of Mr. SIMON, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 457, a bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws.

S. 495

At the request of Mrs. KASSEBAUM, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 607

At the request of Mr. WARNER, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 615

At the request of Mr. AKAKA, the names of the Senator from Alaska [Mr. STEVENS], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Florida [Mr. MACK] were added as cosponsors of S. 615, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 626

At the request of Mr. HATFIELD, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 626, a bill to amend the Watershed Protection and Flood Prevention Act to establish a waterways restoration program, and for other purposes.

S. 641

At the request of Mr. KENNEDY, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 650

At the request of Mr. SHELBY, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Arizona [Mr. KYL] were added as cosponsors of S. 650, a bill to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions, and for other purposes.

SENATE JOINT RESOLUTION 31

At the request of Mr. HATCH, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of Senate Joint Resolution 31, a joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

SENATE RESOLUTION 110

At the request of Mr. NICKLES, the names of the Senator from Nevada [Mr. REID], the Senator from New Mexico [Mr. BINGAMAN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of Senate Resolution 110, a resolution expressing the sense of the Senate condemning the bombing in Oklahoma City.

At the request of Mr. BIDEN, his name was added as a cosponsor of Senate Resolution 110, supra.

At the request of Mr. WELLSTONE, his name was added as a cosponsor of Senate Resolution 110, supra.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY FAIRNESS ACT

ABRAHAM (AND MCCONNELL) AMENDMENT NO. 597

Mr. ABRAHAM (for himself and Mr. MCCONNELL) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

At the end of the pending 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 ''claimant'' means any natural person who files a civil action arising under any Federal law or in any diversity action in Federal court and—

(i) if such a claim is filed on behalf of the claimant's estate, the term shall include the claimant's personal representative; or

(ii) if such a claim is brought on behalf of a minor or incompetent, the term shall include the claimant's parent, guardian, or personal representative;

(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 claimant and the attorney, whether by telephone or in person, concerning the details, facts, or basis of the claim;

(G) the term ''natural person'' means any individual, and does not include an artificial organization or legal entity, such as a firm, corporation, association, company, partnership, society, joint venture, or governmental body; and

(H) 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 claimant shall, at the initial meeting, disclose to the claimant the claimant's right to receive a written statement of the information described under paragraph (3).

(B) WAIVER AND EXTENSION.—The claimant, 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 claimant shall provide a written statement to the claimant 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 claimant 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 claimant 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 (A).

(5) FAILURE TO DISCLOSE.—Except with regard to a claimant who provides a waiver under paragraph (2)(B) or (4)(B), a claimant 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 resulting from the failure to disclose 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.

HOLLINGS AMENDMENT NO. 598

Mr. HOLLINGS proposed an amendment to amendment No. 597 proposed by Mr. ABRAHAM to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

At the end of the matter proposed to be inserted, add the following:

SEC. 302. LIMITATIONS ON FEES.

If an attorney at law brings a civil action or is engaged to defend against any civil action, the attorney may not be compensated for the legal services provided in connection with that action at a rate in excess of $50 an hour.

BROWN AMENDMENT NO. 599

Mr. GORTON (for Mr. BROWN) proposed an amendment to amendment No. 596 proposed by Mr. GORTON the bill H.R. 956, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . REPRESENTATIONS AND SANCTIONS UNDER RULE 11 FEDERAL RULES OF CIVIL PROCEDURE.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subsection (b)(3) by striking out ''or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery'' and inserting in lieu thereof ''or are well grounded in fact''; and

(2) in subsection (c)—

(A) in the first sentence by striking out ''may, subject to the conditions stated below,'' and inserting in lieu thereof ''shall'';

(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof the following: ''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.''; and

(C) in paragraph (2)(A) by inserting before the period '', although such sanctions may be awarded against a party's attorneys''.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Committee on Energy and Natural Resources for Thursday, April 27, in room SD–366 to consider S. 537 and H.R. 402, bills to amend the Alaska Native Claims Settlement Act, will begin at 9:45 a.m. instead of 9:30 a.m., as previously scheduled.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for an executive session, during the session of the Senate on Tuesday, April 25, 1995, at 9:30 a.m.

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

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet on Tuesday, April 25, 1995 at 2 p.m. in open session to receive testimony on the Department of Energy's Environmental Management Program in review of the defense authorization request for fiscal year 1996 and the future years defense program; Defense Nuclear Facilities Safety Board reauthorization.

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

ADDITIONAL STATEMENTS

MORRIS K. UDALL PARKINSON'S RESEARCH, EDUCATION, AND ASSISTANCE ACT

● Mr. HATFIELD. Mr. President, since the introduction of the Morris K. Udall Parkinson's Research, Education, and Assistance Act, S. 684, on April 6, 1995, I have received subsequent letters of support from many groups and individuals around the country.

I ask that a list of these groups and individuals be printed in the RECORD following a letter of support from the chairman of the National Parkinson Foundation, Inc.

The material follows:

NATIONAL PARKINSON FOUNDATION, INC.,
Miami, FL, March 27, 1995.

Hon. MARK HATFIELD,
U.S. Senator,
Washington, DC.

DEAR SENATOR HATFIELD: The National Parkinson Foundation was founded with a dual purpose. Firstly, to find the cause and cure of Parkinson's Disease and secondly, to improve the quality of care for Parkinson patients and their caregivers.

Our fifty thousand square foot headquarters building, located in Miami, Florida, comprises clinical offices, research facilities, therapeutic departments and a Parkinson day care center.

In addition, our dedication has caused us to create and to support twenty additional

centers located in the most prestigious medical schools in the United States as well as to create seven more such centers world wide.

Thus, it is evident how all encompassing our representation is in and for the Parkinson community.

I assure you of the utmost support of the entire National Parkinson Foundation organization on behalf of the ''Morris K. Udall Parkinson's Research, Assistance, and Education Act of 1995''.

I also wish to assure you that I personally am available in any manner you see fit to assist you in support of the bill.

Sincerely,

NATHAN SLEWETT,
Chairman.

LETTERS OF SUPPORT

Letters of support were received from: Orange Elderly Services, Inc., Orange, CA; the Grand Strand Parkinson's Support Group, Calabash, NC; The Parkinson's Disease and Movement Disorders Center at the Graduate Hospital, Philadelphia, PA; Parkinson's Support Group of Santa Maria, CA; Parkinson's and Other Neurological Discorders, Inc., Joplin, MO; Social Service Federation, Parkinson's Support Group, Englewood, NJ; Parkinson's Disease Support Group, Sioux Valley Hospital, Sioux Falls, SD; San Joaquin Valley Parkinson Support Group, Turlock, CA; Parkinson's Support Group of Greater Syracuse, NY; Tri-State Pittsburgh Chapter, American Parkinsons Disease Association, Pittsburgh, PA; Houston Area Parkinson Society; Houston, TX; Chestnut Hill Rehabilitation Hospital Parkinson's Disease Support Group, Wyndmoor, PA; Parkinson Foundation of Harris County, Houston, TX; American Parkinson Disease Association Information and Referral Center, National Capital Area, Fairfax, VA; Norfolk Parkinson Support Group, Norfolk, NE; Parkinson Support Group of Tarrant County, TX, Fort Worth, TX; Lake County, Illinois Parkinson's Support Group, Mundelein, IL; Wellness Interaction Network, Encino, CA; Palo Alto Parkinson's Support Group, Palo Alto, CA; Parkinson Partners of NW Pennsylvania, Erie, PA; South Sound Parkinson's Support Group, Olympia, WA; Rockford, Illinois Parkinson's Support Group, Rockford, IL; Greater Daytona Parkinson's Support Group, Ormond Beach, FL; American Parkinson Disease Association, Oahu chapter, Honolulu, HI; Greencroft Retirement Community Parkinson's Support Group, Goshen, IN; Parkinsonian Publications; Harvey Checkoway, PhD, Professor of Environmental Health and Epidemiology, University of Washington, Seattle, WA; Walter C. Low, Ph.D., professor of neurosurgery, University of Minnesota, Minneapolis, MN; Parsippany Parkinson Support Group, Parsippany, NJ; Wise Young, Ph.D., MD, professor of neurosurgery, physiology, and biophysics, New York University Medical Center, New York, NY; Chico Parkinson's Support Group, Chico, CA; Colonial Club Senior Center Parkinson's Support Group, Sun Prairie, WI; American Parkinson Disease Association Information and Referral Center, Suffolk County, Smithtown, NY; Longmont, Colorado Parkinson's Disease Support Group, Longmont, CO; North Central Mississippi Parkinson's Support Group, Greenwood, MS; Central New York Parkinson Support Group, Herkimer, NY; Erwin B. Montgomery, Jr., MD, associate professor of neurology, the University of Arizona Health Sciences Center, Tucson, AZ; Nebraska Parkinson's Action Information Network, Lincoln, NE; Parkinson Support Group of North Jersey, Verona, NJ; Parkinson's Enrichment Program Support Group, New York, NY; William C. Koller, MD, Ph.D., Professor and chairman, department of neurology, the University of Kansas Medical Center, Kansas City, KS; Dallas Area Parkinsonism Society, Dallas, TX; the Movement Disorder Society, Houston, TX; Eisenhower Medical Center Parkinson Center of Excellence, Rancho Mirage, CA; American Parkinson Disease Association Information and Referral Center, Reno, NV; Parkinson Support Group Foundation of Long Island, Inc., Rockville Centre, NY.●

MCKENDREE COLLEGE'S NEW PRESIDENT

● Mr. SIMON. Mr. President, James W. Dennis will be inaugurated as McKendree College's 32d president on April 29. Whether as a faculty member or administrator, Dr. Dennis has had an exceptional commitment to young people.

Throughout his career, Dr. Dennis has been active in both the academic and nonacademic communities. For instance, Dr. Dennis founded the National Youth Program which offers educational and sports opportunities to disadvantaged youth. He has also provided learning opportunities for high school and college educators by establishing the educational seminars. A world class advocate and educator, Dr. Dennis has promoted student voluntarism and supported area alcohol and drug-abuse education efforts.

As Illinois' oldest college, McKendree will prosper with Dr. Dennis' activism and commitment. I extend my best wishes to Dr. Dennis and McKendree College.●

TRIBUTE TO LOUISVILLE MALE HIGH SCHOOL

● Mr. MCCONNELL. Mr. President, I would like to recognize Louisville Male High School, from Kentucky, who won first place at the State competition of the We the People . . . The Citizen and the Constitution. This victory entitles these young scholars to compete in the national finals held in our Nation's Capital.

The members of the Louisville Male High School team are: Shannon Bender, Josh Bridgwater, Shilo Burke, Katie Callender, Scott Embry, Jessi Followwill, Adam Greenwell, John Grissom, Christy Jones, Jonathan Keith, Stephanie McAlmont, Stephen McAlmont, Shannon McMillan, Travis Moore, Kristi Mosier, Adam Pedigo, Melanie Rapp, Amber Rowan, Chris Rutledge, Shannon Simms, Eric Stevens, April Stivers, Ricky Suel, Danyaun Vandgrift, Shaniqua Wade.

I would also like to recognize their teacher, Sandra D. Hoover, who deserves much of the credit for the success of the team. The district coordinator, Tommy Dowler, and the State coordinator, Tami Dowler also contributed a significant amount of time and effort to help the team reach the national finals.

The We the People . . . the Citizen and the Constitution program, funded by Congress, is designated 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. Members of Congress and their staff enhance the program by discussing current constitutional issues with both students and teachers.

Mr. President, I would like my colleagues to join me in recognizing these students. It is refreshing to see young people wanting to gain an informed perspective about the history and the principles of the United States constitutional government. I wish the members of the Male High School We the People team the best of luck and look forward to their future in politics and government.●

JAMES R. SCHLESINGER: PAUL H. NITZE AWARD RECIPIENT

● Mr. MOYNIHAN. Mr. President, the Center for Naval Analyses in Alexandria, VA, annually presents the Paul H. Nitze Award in recognition of important contributions to national and international security affairs. This year's recipient of the Nitze Award is the Honorable James R. Schlesinger, who received the award on April 6, 1995.

Dr. James Schlesinger is of course one of the most experienced and able public servants of our time. A distinguished economist, he served during the Nixon administration in several prominent capacities in the Bureau of the Budget, ascending to Assistant Director in 1970, when the Bureau became the Office of Management and Budget. And, as Senators are well aware, he went on to become Director of Central Intelligence and Secretary of Defense in the Nixon and Ford administrations, and Secretary of Energy under President Carter. Dr. Schlesinger has also served for many years as senior advisor at Lehman Brothers, and he is widely respected for his scholarship arising out of his long association with the Center for Strategic and International Studies at Georgetown University.

On receiving the Paul H. Nitze Award, Jim Schlesinger delivered an outstanding lecture on ''American Leadership, Isolationism, and Unilateralism'' in which he points out the need for close attention to the leadership role of the United States in international affairs in the post-cold-war era.

Mr. President, when a scholar and public eminence of James Schlesinger's wisdom and stature addresses himself to an issue of such significance to world affairs, I believe it is incumbent on all of us to take notice. Every Senator will benefit from a careful reading of Dr. Schlesinger's speech, and I therefore ask that it be printed in the RECORD.

The speech follows:

SOME REFLECTIONS ON AMERICAN LEADERSHIP, ISOLATIONISM, AND UNILATERALISM

Ladies and Gentlemen: It is a special pleasure as well as an honor to have been chosen to receive the Paul H. Nitze Award. It is a special pleasure because Paul and I have been collaborating directly for almost a quarter of a century—and indirectly for even longer. I started working for Paul in the early 60's, when I was at the RAND Corporation, and he was head of International Security Affairs at the Pentagon. Years later when I was Secretary of Defense, Paul also worked for me. That clearly was the way it read on the organization chart, though, for those of you who may not be aware of this, such charts do not necessarily convey the whole of reality.

Of course, it is also a great honor for reasons that must be obvious—Paul's many contributions to this nation, his keenness of intellect (not the most common characteristic among high officials), his abiding role as a senior statesman. But perhaps one of Paul's most remarkable strengths is the cool and detached view that habitually he has taken with regard to national security affairs—rising above the hubbub of controversy. That characteristic has been displayed most prominently in matters such as the Palestine crisis of 1947, the Watergate crisis, and a ''walk in the woods''. Paul has displayed not only staying power, but (to avert to an issue that first brought us together) great throwweight in national security affairs. So it is a distinct honor as well as a personal pleasure to have been selected for this year's Nitze Award.

As most of us will recall, Paul Nitze was one of the principal authors of NSC–68, which, in the aftermath of World War II, charted that transformed role for the United States in international affairs—of leadership and continuous engagement. In a sense, the intellectual underpinnings of NSC–68 guided American policy for more than 40 years. But we all realize the era of NSC–68 is now over. It ended, rather abruptly, with the demise of the Soviet Union. Of course, it was Soviet misbehavior in the postwar world that formed the national consensus which gave sustenance to the design that underlay NSC–68. It manifested itself in the Greek-Turkish aid program, the Marshall Plan, the NATO Alliance—and, shortly later, the response to aggression in the Korean peninsula and the U.S.-Japan Security Treaty.

Yet, with the fall of the Soviet Union, this nation has been stripped both of guideposts to our foreign policy and of the national consensus that underpins that policy. Both the uncertainties and the challenges are substantial. This nation is deeply enmeshed in world affairs. For better or worse, it is the leading world power. No longer is it free, as it felt itself to be through much of its history, to stand aloof, to isolate itself from political events abroad. Yet, the clear guidelines that marked those past period of engagement are now lacking.

For this reason I want to spend some time this evening reflecting on American leadership, on isolationism, and on unilateralism. In his inaugural Nitze Award lecture, Sir Michael Howard looked back in time to review lessons from the Cold War Period. I seek to look forward—to what comes next. Of late, one may have noticed the demands for ''American leadership'' and the charges of ''isolationist'' that have reverberated across the political landscape. That the charge of ''isolationist'' is so widely used as a political epithet reveals that the notion that America can stand aloof has little resonance with the American public. The public fully accepts that its economic ties, its political interests, even its residual vulnerability in an era of nuclear weapons, preclude a wholesale American withdrawal from international affairs. Moreover, even if we could stand aside, the voice of conscience insists that it would not be right for America to be indifferent to political travail, particularly when it affects long-time allies of the United States.

By contrast to these rejected charges of isolationism, the image of American leadership has a grand resonance. Unhappy events overseas, whether or not there is any serious American interest, are regularly blamed on the ''failure of American leadership''. Everybody seems to urge American leadership. Americans like to flatter themselves with the notion that this country is the ''sole surviving superpower''—and expect action to make those unhappy events go away—so long as it does not cost us very much. Our European allies—sometimes rightly, sometimes wrongly—have demanded: Where is American leadership? (Of late that cry has diminished in intensity, as European expectations regarding American leadership have faded.) Our Asian associates have resented our continuous preaching, yet all are concerned that an erosion over time of American power in the Pacific will allow an instability from which until now they have been protected. Preachers, teachers, editorial writers, if not little children in the street, seem to presuppose American leadership—but fundamentally treat it as a panacea—as a ready antidote for most, if not all, of the world's problems.

Thus, the real issue comes down, not to withdrawal or isolation—those are epithets—but to when, where, and how we choose to intervene. In part the charge of isolation really comes down to a suspicion of unilateral moves by the United States on the international scene. For those who embrace multilateralism and who prefer to work through international bodies, the charge of isolationist comes readily as a riposte to those who do not agree with them. But multilateralism can readily be a cover for inaction. It can also be, and frequently is, a vehicle for ineffective action. Of course, those who instinctively prefer to work through international bodies are frequently right that their opponents are short sighted or even blindly chauvinistic. But their actions are scarcely isolationist. Rightly or wrongly, they are regularly intended to achieve international objectives. But such unilateralist impulses may be equally flawed or ineffective.

The Clinton Administration has chided its foes for being isolationists. It is perhaps merely the most recent assertion of ''assertive multilaterialism''. Their critics, in turn, have responded in kind. The Administration may fervently believe in the collaboration among nations, yet it has shown a distinct proclivity to become embroiled in quarrels with individual nations, sometimes including old allies, over issues which are either only remotely our business or over which our influence is modest. Endangering ties with those that have been reliable allies, along with ineffectual, if irritating, advocacy of policies over which our influence is slight runs the risk of weakening the ties between ourselves and other nations—in effect isolating the United States. In terms of its accolades to international engagement, the Administration is clearly beyond criticism. It is only those specific actions that the Administration takes, which properly comes out and which understandably alarms its critics. Irrespective of the good intentions, such actions may weaken the international position of the United States.

Thus, the question is not one of isolation or withdrawal. The question is where, when, and on what terms does the United States become engaged. What is our foreign policy to be—now that the conceptually easy task of containment has come to an end. It is perhaps unnecessary to remind this audience that such questions are antecedent to the issue of shaping our military forces. The shaping of those forces depends upon the role that the United States wishes to play in the world—and the circumstances under which those forces may become engaged.

II

Thus, we seek a new paradigm for an effective foreign policy. We seek, in effect, a successor to NSC–68. But it is not easy to come by. Some of the difficulty in finding that new paradigm is inherent. It is probably unavoidable that we flounder to some degree at historic turning points. We did so after World War II. It was not until 1947–1948 that we began to find our bearings—and to do that we had the indispensable help of Joseph Stalin. Now the international scene is vastly more complex and yet there is much less direct danger to the United States. Though there are numerous eruptions on the international scene, there is little to concentrate the mind.

In every such eruption, somewhere someone will call on the United States to do something. ''Concentrating the mind'' is indispensable to some degree. It is better that we recognize that simple fact rather than having reality thrust upon us. No nation can do everything; we would be wise not to aspire to do so.

I can recall over 40 years ago listening to a debate at Harvard regarding the resolution of one of our seemingly perennial steel strikes—during which John Dunlop, later Secretary of Labor, commented: ''It is important for a democracy not too frequently to demonstrate its own ineffectiveness''. I have never forgotten that injunction. But what is true for domestic policy is even more true for foreign policy. Becoming engaged in numerous disputes, particularly if one lacks public backing, is the high road to ineffectiveness.

Perhaps it is obvious to say that the problem is especially difficult for the United States, which, as a world power, might find its attention drawn in any one of many directions—and for which public backing is a sometime thing and must be carefully fostered.

In the past and for other great powers, the choice of foreign policy tendered to be far simpler. For most it was geographically determined. There likely would be an historic enemy. For, say, France or Germany, there was little uncertainty as to who one's foe might be and where one must be prepared to fight. To be sure, for Britain, whose imperial interests were more far-flung, the problem was broader: to protect communications with the empire and to prevent any single power from dominating the Continent. Yet for the United States today, our interests are even more diverse, and the challenge of being a world power has grown since the era of European dominance.

Moreover, the task was far easier in another respect. Given what was seen as clear national interests, the unquestioned rule for the European powers stressed the priority to be assigned to foreign policy. The phrase from Bismarckian German puts it simply: das Primat der Aussenpolitik—the primacy of foreign policy. Yet, the primacy was far easier to establish in a dynastic regime. Even in the case of England, the problem was not insuperable—in light of its clearly defined foreign policy, the preservation of the balance of power, and a continued willingness of the British public to defer to a strong governing class.

But here in the United States we now show signs of turning das Primat der

Aussenpolitik on its head and allowing foreign policy to be determined by domestic politics. In any democracy that is a continuing temptation; it is particularly a problem in the United States where the vicissitudes of public opinion can so easily determine public policy. And, particularly is this so in the absence of an overriding fear (as with the Soviet Union) or an overriding anger as with Japan or Spain in an earlier era (Remember Pearl Harbor, Remember the Maine). In sustaining public support, it is frequently helpful if the anger has focused on a weak foe (Mexico, Spain, or Grenada) for then one can count on public exultation in a ''glorious little war''.

When, however, there is no clear and formidable foe and when only a few Middle Eastern countries seem to generate public anger, it is difficult to sustain a priority in foreign policy (as George Bush belatedly discovered). It is thus seductively easy to accept the primary of domestic politics.

In addition to the absence of a clear focus and the existence of diverse areas of potential responsibility for the United States, which alone is a world power, there is a further problem. There are too many distractions, most of them transitory in nature. It is difficult to concentrate on those issues that might represent ''permanent interests'', given the worldwide domain of television with a power, if not an agenda, that exceeds that of ''yellow journalism'' in the past. Rather than permanent interests, we experience sudden passionate interest in the Bosnians, the Kurds, the Rwandans, the flight of Haitian or Cuban refugees, then the Kurds again that lasts a few weeks or months at most—until the story pales, the public tires of it, and then moves on. Surely that complicates the task of selecting those interests and issues to which we should adhere. It makes the challenge of sustaining support for long term interests, as opposed to momentary distractions, immensely difficult.

Need I add that these factors also make immensely difficult the task of force planning. There is uncertainty as to what our foreign policy may be. Consequently, there is an uncertainty as to where we might fight. Choosing two major regional conflicts as ''representative'' is hardly an ideal solution—reminding us of the locale of past conflicts rather than of the likely future conflicts. Moreover, under these circumstances there are genuine conflicts regarding specific foreign objectives. With respect to our Asian policies, for example, the DOD's International Security Affairs opines: ''the United States remains dedicated to strengthening alliances and friendships''. Yet, this scarcely describes the motives that guide the actions of the U.S. Trade Representative, who is predisposed to confrontations with the same Asian states—by implicitly, if not explicitly, threatening to weaken those alliances and friendships. In U.S. policy there is a growing mixture of economic rivalry and alliance reassurance. Perhaps this is unavoidable, yet clearly it undercuts any joint planning with those allies on whom we should be able to count.

III

I have now devoted some time to explaining why in this postwar world the inherent difficulties for this nation shaping its foreign policy have grown. Now let me turn to analyzing how our own actions have been compounding those difficulties inherent in this altered world—and have seemed to undercut that role of world leader which we ostensibly cherish. But first I must portray the general behavior and the style necessary to sustain the role of world leader. One does not require any special knowledge or erudition to understand these requirements; they should be obvious to any long time observer of politics.

First, to be accepted as a leader, a nation must be seen not to be acting primarily for its own account. It must understand and take into account the interests of its followers. It must also be seen to be genuinely interested in international affairs—rather than blindly follow the dictates of its own domestic politics. AND it must focus on matters of real consequence.

Second, it must be reasonably consistent. Changes in policy should be few in number—and taken for what are seen as valid reasons. One must be steadfast. A great power does not lightly enter into commitments, but when it does so it must be with the serious intent of carrying them out. In brief those who wish to retain a position of leadership must avoid capriciousness. Otherwise one's credibility rapidly diminishes, and one's influence fades with almost equal rapidity.

Of late the United States has failed to observe these obvious rules. While we flatter ourselves as the world's sole remaining superpower, we seem to be amazed that our influence seems to be shrinking. To be sure, some such shrinkage is inherent in the change of circumstances. With the demise of the Soviet threat, other nations, previously dependent upon the United States for protection, are now less dependent and so less inclined to defer to our wishes. But the erosion of our influence proceeds more rapidly than required by the circumstances. If we are to arrest that decline, we must understand the causes.

If a nation is to lead, it must seem to be genuinely concerned about international affairs—and not driven primarily by domestic pressures. Nonetheless, in recent years our policies being driven by domestic constituencies appear to be the rule rather than the exception. In Northern Ireland, in Haiti, in respect to Cuba or Haitian refugees, in much of the Middle East, our policies seem to be driven by domestic pressures—and we appear largely indifferent regarding the international repercussions. A hungerstrike and pressures from the Black Caucus brought a shift in our policies toward Haiti. A senior official backgrounds to the press that: ''No one will get to the right of us on Iran''. The President's National Security Advisor reveals that the United States will attempt once again to tighten sanctions on Libya by persuading our European partners to cease buying Libyan oil. This revelation occurs, not in a regular diplomatic forum, but in a meeting with the families of the victims of Pan Am 108.

Disappointed as they may have been, Europeans were not really surprised that the United States did not regard Bosnia as primarily our business. (Especially was this so in light of the European Union's having previously told us that Europe would handle Bosnia, and there was no need for our intervention.) They were, however, non-plussed that we would regard the affairs of Northern Ireland as primarily our business. Northern Ireland is, after all, a province of the United Kingdom, part of its sovereign territory. For us to butt in (no other expression seems suitable!) for domestic political reasons appeared both ignorant and bumptious. Such behavior is scarcely consistent with the solidarity of NATO, let alone the ''special relationship''. I cannot overstate the dismay of other Europeans regarding our treatment of the British. The general reaction is: If the Americans will behave this way to their most intimate partner, what can the rest of us expect? The diplomat's word for this episode is: ''disappointment''.

This Administration is explicitly vulnerable to the conservative charge that it is soft—most notably soft on Saddam Hussein. For this reason it seeks, with ever lessening support and growing desperation to maintain the sanctions on Iraq that were adopted in 1990. Three of the five permanent members of the Security Council have now introduced a resolution to terminate those sanctions. Even Iraq's neighbors regard our policy as no longer productive, though they are reluctant to say so to our highest officials. If the United States is seen primarily for domestic political reasons to be stretching out sanctions believed to be unproductive, if not unjust, how ready will others again be to follow American leadership in imposing sanctions? The answer is clear. A willingness to put domestic pressures in front of international considerations will undermine the very multilateral mechanisms that the Administration believes ideal for abiding international stability. Indeed, with respect to Libya, Iran, and Iraq, rather than achieving its declared goal isolating those countries, our diplomacy tends to isolate the United States itself.

The effect of these altogether too many cases of putting domestic politics first is to obscure those instances in which the Administration has rightly focused our policies on the longer term interests both of this nation and of international stability—most notably our relations with Russia and the spread of nuclear weapons. Other nations doubt that we understand their interests, let alone take them into adequate account. When the United States proclaims that providing (6000 thermal megawatts of) light water reactors to North Korea is the best remedy for curbing North Korea's drive to acquire nuclear weapons, it makes it somewhat difficult, to say the least, to persuade the Russians that providing light water reactors in Iran creates an open road to nuclear spread. To be effective, even with respect to common long-term interests, a leader needs to maintain its credibility.

The problem goes well beyond the Administration. One can think of many advantages of divided government—invetting domestic proposals. However, I myself can think of virtually no advantages in divided government with respect to international affairs. It weakens the voice of any Administration—and it undermines the credibility of American diplomacy. This Congress now seems inclined to inflict on the Clinton Administration's policies regarding Bosnia and regarding Russian aid the same kind of cavalier treatment with which its Democratic predecessor treated President Bush's policies toward China after Tiananmen Square. Whatever the merits or defects of our policy on the so-called Mexican bail out or toward Iran, Congressional intervention does not seem likely to improve them.

Our policies have been changeable rather than consistent. Our commitments do not appear to be reliable. Our policies appear excessively driven by domestic constituencies. The result is that the call for American leadership is diminishing in strength. Increasingly American leadership appears to be a problem rather than a solution.

We are tempting fate. Some years ago Paul Nitze suggested that ''other nations can be expected to coalesce to cut us down to size''. Unless we are prepared to deflect our own domestic pressures, to take international considerations primarily into account, to understand the differing interests of other nations, and to pursue worthy long-term, common interests, we shall regrettably accelerate that process. Writing in 1950 in his splendid work, ''American Diplomacy,'' George Kennan observed: ''history does not forgive us our national mistakes because they are explicable in terms of our domestic politics''. He also states: ''A nation which excuses its own failures by the same sacred untouchableness of

its own habits can excuse itself into complete disaster''.

With the end of the totalitarian threat, with the remarkably changed international circumstances, the danger to the United States has visibly receded, and there is little likelihood of a ''complete disaster''. Nonetheless, despite the lessened danger, the possibility remains of cumulative small setbacks and the erosion of our position. We may ignore such possibilities—and it is unlikely to be fatal. Still the rules are quite simple. To be a leader, a nation must sustain its credibility.

Ladies and Gentlemen, you have been more than patient. I must draw to a close—and must also offer a few conclusions.

During the Cold War the stakes were immense: the preservation of the Western democracies and, if I may say so, the substantial preservation of Western Civilization itself of which the United States was the security mainstay. (I say this despite the probable assault of the multiculturalists.) But with the end of the cohesion and menace of the Soviet empire, the stakes have now shrunken. The United States, the world's most powerful nation, is in a sense free to be capricious, to be irresponsible. Yet, it will not soon fall into direct and serious danger. Nonetheless, there are restraints—and there are prospective consequences of our actions. The price of capriciousness will inevitably be a loss of credibility—and of our position of leadership.

While the United States is a powerful country, it is not all-powerful. At the close of the Nineteenth Century, Secretary of State Richard Olney could declaim during the Venezuelan dispute with Great Britain that the United States' ''word was fiat on this continent''. Whatever we may wish, it is *not* fiat around the world. To pretend otherwise will make us look foolish. The focus of our foreign policy concern, as Paul Nitze has said, should be ''what kind of relations among the leading powers''. We must be cautious about involving ourselves in matters of lesser consequences. We should be restrained in word as well as deed. The United States is not obliged to comment on everything. Meddling in issues in which our interests are only tangentially involved, nagging others about their defects, real or imaginary, may make us feel good for the moment. It is not the road to successful or long-term leadership.

To provide long-term leadership, other nations must understand that we do not speak casually or loosely. When we do choose to make a commitment, other nations need to know that we can and probably will live up to it. Always remember: leadership is not an inheritance; it must be earned anew, each decade, each year.●

TRIBUTE TO MARTHA COMER

● Mr. MCCONNELL. Mr. President, I rise today to pay tribute to an outstanding Kentuckian who has been selected for induction into the Kentucky Journalism Hall of Fame. Mrs. Martha Comer of Maysville, KY, is devoted to her profession, to the Ledger-Independent, formerly the Daily Independent, and to her community.

Martha Comer was born in 1906, the same year that her father founded the Daily Independent. It is not surprising that Martha displayed her journalistic qualities at a young age. She served as the editor of the school annual at Maysville High School. Upon her graduation from high school she began working on the editorial staff of the Daily Independent. She assumed the duties as editor in 1935, although her name did not appear as editor until 1941.

In 1968 the Daily Independent was sold to the Maysville Publishing Corp. and became the Ledger-Independent. At this time Martha became the editor and was responsible for publishing both the morning and afternoon editions. Although Mrs. Comer retired on January 7, 1977, she continued to remain on as an editorial consultant. For many years she continued to write a daily column and editorials. And to this day, Martha Comer still writes editorial commentary two or three times a week for the Labor-Independent.

Mrs. Comer's editorial involvement allowed her to become actively involved with her community. She has campaigned tirelessly for many organizations and causes, such as advocating public policy and teaching in the literacy program.

Mr. President, I would like my colleagues to join me in paying tribute to Martha Comer, a new inductee into the Kentucky Journalism Hall of Fame. I am positive that Mrs. Comer will continue to display the great qualities in which she has in the past. I know that her community appreciates her involvement and dedication.●

TRIBUTE TO DENNIS GRIFFIN

● Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Dennis Griffin, a resident of Bowling Green, KY, who is being recognized as one of the top local developers in the Nation. Mr. Griffin is 1 of 10 economic developers who received a leadership award from the American Economic Development Council.

Mr. Griffin has been president of the Bowling Green-Warren County Chamber of Commerce since 1986, the same year he moved to Kentucky. Since taking over as president of the chamber of commerce the local economy has soared. Mr. Griffin is best described by Bowling Green Mayor Johnny Webb in a recent article in the Daily News. Mayor Webb said,

> Things were not going too well in Bowling Green. It had been some time since we had recruited a new industry. It was almost like a lightbulb coming on when (Griffin) came in and got his feet on the ground. He is the catalyst to development.

Mr. President, during the last 9 years, Mr. Griffin has worked hard to develop the region. He is responsible for starting 56 new companies, and establishing 6,000 new jobs; an investment of more than $400 million in the community. But that's not all, Mr. Griffin also worked hard to help 72 existing industries expand, which created an additional 2,500 jobs, investing another $100 million in the community.

Mr. Griffin, just like the Energizer Bunny, is still going strong even after 9 years of service. In the last year alone, 10 new plants have decided to call Bowling Green their home and 9 companies have expanded.

Mr. President, I ask my colleagues to join me in paying tribute to this outstanding Kentuckian. I think that all will agree that through his hard work and dedication for his community, Mr. Griffin proves that he truly deserves the honor of being one of the country's top local developers.●

MORNING BUSINESS

ALASKA NATIVE CLAIMS SETTLEMENT AMENDMENT ACT

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 43, H.R. 421, the Cook Inlet Region bill, that the bill be deemed read a third time, passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

Mr. MURKOWSKI. Mr. President, the Senate is about to take up H.R. 421, the Alaska Native Claims Act Amendment Act of 1995. I wish to take a few moments to describe H.R. 421 and importance of passing the bill this evening.

On March 15, 1995, the Committee on Energy and Natural Resources unanimously reported nearly identical legislation for consideration by the full Senate.

The bill allows the Cook Inlet Region Incorporated Native corporation, called CIRI, to consider creating a system to buy back the stock of willing sellers, provided that stockholders vote to set up such a system. It will serve as a test for an alternate system of stock distribution that could later be expanded for use by any of the State's Native regional corporations.

The goal of H.R. 421 is simple: to provide a responsible middle ground so that shareholders will have access to the capital value of their stock, while preserving the Native control and ownership of the ANCSA corporations.

Originally under the 1971 Alaska Native Claims Settlement Act, Native shareholders were prevented from selling their stock for 20 years. This was to give the corporations time to mature. As part of a series of 1991 amendments to the corporations, Congress changed the law, at the request of the Natives, so that stock restrictions on alienability—the right of Natives to sell their shares—automatically continued unless and until the shareholders of a corporation voted to remove them.

H.R. 421 will provide another alternative. Shareholders will be able to sell their stock back to the corporation, helping preserve Native control if: First the corporation's board votes to participate; second, the majority of the entire membership of the corporation votes to permit buybacks; and third, if

individual shareholders then want to participate. All three conditions must be met before any sale of stock is possible.

When the legislation was considered in the House, an issue arose regarding that section of the bill that provides protection from liability to CIRI, its directors and officers and evaluation advisors when making an offer to purchase stock. I have reviewed the amendment and find it acceptable. It contains the protection needed by CIRI, and is consistent with the Alaska Native Claims Settlement Act. The protections from liability provided in the language are intended to apply to all causes of action under any provisions of State or Federal law and are limited to stock re-purchase offerings made pursuant to this legislation.

H.R. 421 provides a test case for Native corporation stock distribution. Senator STEVENS and myself have proposed this bill at the request of CIRI and the Alaska Federation of Natives. The other corporations have said they would like to see how this works in CIRI's case before deciding whether they would like the option extended to them.

The important thing to remember is that this legislation has several safeguards to ensure that any stock repurchases will be conducted fairly—the biggest safeguard is that the program can't happen unless approved by a majority vote of shareholders.

This bill provides a fair alternate means for distributing corporation stock while preserving Native control of the ANCSA corporations.

I have worked with Alaska's Native community for the last 15 years and I am sure that the Native people are more than capable of making their own decisions that affect their own corporate affairs. The Alaska Native people should have the same choices that all other stockholders in America have.

I urge my colleagues to support H.R. 421.

The bill (H.R. 421) was deemed read three times and passed.

ORDERS FOR WEDNESDAY, APRIL 26, 1995

Mr. GORTON. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10:30 a.m. on Wednesday, April 26, 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 the Senate then immediately resume consideration of H.R. 956, the product liability bill.

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

PROGRAM

Mr. GORTON. Mr. President, for the information of my colleagues, under the provisions of the agreement entered earlier, at 5 p.m. tomorrow the Senate will begin 60 minutes of debate to be followed by two consecutive rollcall votes. Members should, therefore, be aware that there will be two stacked votes at approximately 6 p.m. There will be no rollcall votes prior to those votes in order to accommodate Members attending the funeral of Senator Stennis.

RECESS UNTIL 10:30 A.M. TOMORROW

Mr. GORTON. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 8:21 p.m., recessed until tomorrow, Wednesday, April 26, 1995, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 25, 1995:

THE DEPARTMENT OF STATE

MOSINA H. JORDAN, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CENTRAL AFRICAN REPUBLIC.

LANNON WALKER, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COTE D'IVOIRE.

SANDRA J. KRISTOFF, OF VIRGINIA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS U.S. COORDINATOR FOR ASIA PACIFIC ECONOMIC COOPERATION (APEC).

THE JUDICIARY

TERENCE T. EVANS, OF WISCONSIN, TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT, VICE RICHARD D. CUDAHY, RETIRED.

WILLIAM A. FLETCHER, OF CALIFORNIA TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE WILLIAM ALBERT NORRIS, RETIRED.