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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, May 9, 1995, at 12:30 p.m.

Senate

MONDAY, MAY 8, 1995

(Legislative day of Monday, May 1, 1995)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the Honorable CRAIG THOMAS, a Senator from the State of Wyoming.

PRAYER

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

Let us pray:

O God, our help in ages past, our hope for years to come, our refuge, and our strength, we join our hearts and voices with people across our Nation and throughout the world in grateful praise to You. Today, as we remember that triumphant Victory in Europe Day a half a century ago, we thank You for being an ever-present help in trouble. Thank You for the gift of memory, not only to remember the depths of degradation and depravity to which humankind fell under the dictatorship of Adolf Hitler and the Third Reich, but most of all, help us never to forget Your divine intervention that made possible the Allied victory. We remember the supreme sacrifice of so many men and women in that war to liberate humankind from the grip of a brutal enemy.

Lord of history, we go about the work of this Senate today with a renewed assurance that You do have the final word. When the enemies of righteousness and justice have done their worst, You help Your people to fight for freedom and You do bring an end to suffering. You have intervened to help us in just wars against the despots and dictators of history. As we remember the victory of 50 years ago that broke the back of Nazi tyranny, so too You call us to live expectantly with our hope in Your power as we confront the forces of hate and terrorism, injustice and inequality in our time. In Your name Jehovah-Shalom, Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 8, 1995.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CRAIG THOMAS, a Senator from the State of Wyoming, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. THOMAS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

THE CHAPLAIN'S PRAYER

Mr. DOLE. Mr. President, first let me thank the Chaplain for his prayer today. This is a very important day for millions of Americans. It seems to me that it is time for reflection, to think about America, and to think about 55-plus million people who lost their lives in World War II. That includes civilians, innocent women and children, combatants on all sides, plus about 6 million Jews who suffered death in the Holocaust.

This is a very important day. And later today I hope to submit a resolution about V–E Day, which I am certain the Senate will adopt. I will be looking for sponsors on both sides of the aisle.

SCHEDULE

Mr. DOLE. Mr. President, following leader time, there will be morning business until the hour of 12 noon with Senators permitted to speak for up to 5 minutes each.

At 12 o'clock we will resume consideration of H.R. 956, the product liability bill.

At 4 o'clock there will be a cloture vote on the pending substitute unless second-degree amendments are offered and can be voted upon. That may slip just a little bit. I understand there are one or two Senators who cannot be here right at 4 o'clock. The first three amendments should be filed by 1 o'clock today. Second-degree amendments should be filed by 3 o'clock today.

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

A second cloture vote will occur tomorrow if cloture is not invoked today.

It is also my hope that we might at least debate this evening the CIA nomination, Mr. Deutch. I think the administration would like to have that done. I think it is a 2-hour time agreement. We can debate that this evening, and have the rollcall vote tomorrow morning.

I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 12 noon with Senators permitted to speak therein for not to exceed 5 minutes each.

RECOGNITION OF SENATOR BYRD

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia is recognized to speak for up to 30 minutes.

Mr. BYRD. I thank the Chair.

THE BUDGET

Mr. BYRD. Mr. President, section 301 of the Congressional Budget and Impoundment Control Act of 1974 requires that on or before April 15 of each year the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The failure to meet this deadline, however, has no effect on points of order under the Congressional Budget Act. In fact, Congress has met the deadline only three times since enactment of the 1974 Budget Act; namely, for fiscal years 1976, 1977, and 1994. So, it is not unusual that Congress, at the April 15 deadline, has yet to complete action on the 1996 budget resolution.

It does seem a little unusual that this year's budget resolution has not been reported by the Budget Committee of either House. Perhaps our friends on the Budget Committees are finding it somewhat more difficult to come forward with a budget resolution which will force Congress to make the difficult choices that will be necessary to achieve a balanced budget, than it was to sign the mostly empty pledges that were contained in the vacuous rhetoric of the so-called ''Contract With America.''

For a while, everything seemed to be going along swimmingly for the new Republican majority in Congress. We have been told over and over again by the House Republican leadership that they would balance the budget by the year 2002, while at the same time they would increase military spending, cut taxes by some $630 billion over the next ten years, and take Social Security off the budget-cutting table.

Thus ornament is but the guiled shore
To a most dangerous sea; the beauteous scarf
Veiling an Indian beauty; in a word,
The seeming truth which cunning times put on
To entrap the wisest.

It was obvious to all who examined this visionary proposal that it amounts to a return to the failed policies of supply-side economics undertaken during the Reagan-Bush years. The problem with the Reagan plan was that we did the easy part—we massively increased military spending and we drastically cut taxes. But when it came to the hard part—cutting entitlement spending—everybody balked. We all know what resulted from those actions—a string of unprecedented budget deficits which were the largest the country has ever seen and which ceased to grow only after the election of President Clinton.

In other words, we went on a national spending spree on credit—not paying our bills, but charging them to future generations. As a result, the national debt rose from $932 billion on January 20, 1981, when President Reagan was sworn in, to $4.1 trillion on January 20, 1993, the day that Bill Clinton was sworn in as President.

Immediately following his election, President Clinton submitted a budget that cut the projected Bush deficits drastically and, in fact, in 1993 Congress enacted a massive deficit reduction bill, which President Clinton signed into law. That package of budget cuts reduced the projected deficits over 5 years by roughly $500 billion, and it was passed by both Houses of Congress without a single Republican vote.

The economy has responded well to the deficit reduction that has taken place thus far under the leadership of President Clinton. I believe that the economy will continue to perform well so long as we continue our efforts to whittle away at the massive deficits built up over the dozen Reagan-Bush years.

Tough decisions will be required to balance the Federal budget. I know that it will require drastic action. I believe that the American people, as a whole, are prepared to face the tough choices that will have to be faced in order to balance the Federal budget, so long as they are certain that their elected representatives are administering the budget cuts fairly across every sector of the country. The budget axe should not be wielded indiscriminately. This round of budget cutting, to be effective, should involve priority setting; it should involve separating out the truly effective and necessary Federal Government programs from those that are merely nice to have but not truly necessary for the Federal Government to be involved.

Furthermore, if we are to achieve fairness in our deficit-elimination efforts, we cannot ignore the huge tax subsidies that are written into the Tax Code from time to time and are never looked at again. These kinds of tax expenditures, many of which may well serve a worthwhile national purpose, should no longer be allowed to escape scrutiny along with every other area of Federal activity.

We are told by the Congressional Research Service that there are over 120 separate tax expenditures in current law which will cost the U.S. Treasury $453 billion this fiscal year. That figure will rise to $568.5 billion in fiscal year 1999—unless Congress and the President enact changes to eliminate and otherwise cut back the growth in some of these tax subsidies. If we fail to do so, then how can we possibly expect the American people to believe that we have administered budget cuts fairly?

Incredibly, Mr. President, we have not seen any indication by the Republican leadership that they are prepared to even examine these 120 Federal tax subsidies to see if they are necessary or if they can be afforded any longer.

Instead, we have seen the House pass a massive tax cut bill, which will cost $630 billion over the next 10 years. And, who will get the benefit of those tax cuts? According to the Treasury Department:

Nearly half the tax benefits—47 percent—would go to the wealthiest 10 percent of households. These households all have incomes at least somewhat above $100,000, according to the Treasury measure.

The richest 1 percent of households—1.1 million households—would receive 20 percent of the benefits from the tax package, while the bottom three-fifths of households—65 million households—would receive only 15.6 percent of the total tax benefits, according to the Treasury data.

The average tax reduction for the wealthiest 10 percent of all households would be nearly nine times greater than the average tax reduction for the middle fifth of households—$4,821 and $555, respectively.

Mr. President, I am totally opposed to tax cuts at this time. I will not vote for President Clinton's tax cuts, I will not vote for the House-passed tax cuts, or any other tax cuts that may be proposed at this time. We need to keep an eye on the target of reducing the Federal budget deficit until it is eliminated. From press accounts, I understand that Senator DOMENICI, the very able and experienced chairman of the Budget Committee, is planning to recommend to the Budget Committee a budget resolution which, if carried out, would result in a balanced budget for fiscal year 2002. It is my further understanding that Senator DOMENICI's proposal will not include a tax cut. Instead, a tax cut would have to wait until Congress has enacted the necessary legislation to achieve budget balance, under CBO scoring, by 2002.

If this is the position of the chairman of the Budget Committee, I commend him for his courage and foresight, and for his integrity in placing the emphasis in this year's budget resolution

where it clearly should be—on eliminating the deficit rather than on cutting taxes. I have long admired and respected the intelligence and wisdom of Senator DOMENICI. He is a Senator who takes his responsibilities very seriously and who works tirelessly to carry out these responsibilities.

In addition to containing no tax cut, Mr. President, it is also important that cuts in spending in this year's budget resolution be administered fairly and equitably to both entitlement and discretionary spending. As all Senators are aware, the discretionary portion of the budget is under the control of the Appropriations Committees and amounts to just over one-third, or $549 billion, of the President's 1996 budget. Of the remainder, net interest on the debt will be $257 billion, or 15.9 percent of the 1996 budget. The other one-half of the budget consists of Social Security—which will equal $351.4 billion, or 21.8 percent of the 1996 budget—Medicare, Medicaid, and other mandatory and entitlement programs.

If Social Security is taken off the table, and if we pay the interest on the debt, which we must, then we have removed almost 38 percent of the budget from budget cuts. We are told that the budget resolution will also not cut military spending, and, in fact, will propose an increase in military spending over the next 7 years. If this is done, then we will have shielded 54 percent of the budget from cuts, leaving only 46 percent, including other entitlements, to undergo budget-cutting surgery over the next 7 years.

I ask the American people: Is that a fair way to proceed? Is it fair to cut $500 billion over the next 7 years from domestic discretionary programs, while increasing military spending?

The military consumes $262.2 billion in outlays in the President's 1996 budget. That amount is almost equal to the $265.8 billion that is in the budget for all domestic discretionary programs. This includes law enforcement, education, infrastructure spending on highways and transit, environmental cleanup, clean air and water, research and development, medical research, NASA, national parks, the Justice Department, the judiciary, the FBI, and the operations of virtually all agencies and departments in the Federal Government.

If we follow the Republican plan, we will cut all of these domestic discretionary programs by approximately 35 percent by the year 2002, at the same time we increase military spending. Is that fair? It is not only unfair, it is pure folly.

Furthermore, under the Republican budget plan, the elderly will be asked to pay dearly. Medicare will be cut anywhere from $259-$333 billion over the next 7 years. We hear that these cuts are not being proposed for deficit reduction but only because Medicare will be broke if we do not fix it soon.

Well, Mr. President, I see no proposal from the Republicans on how they intend to fix the Medicare program. All I see is a cut in Medicare spending totaling $259 to $333 billion over the next 7 years. Is it fair to ask for this level of sacrifice from Medicare beneficiaries at the same time military spending will be rising from a starting point of $262.2 billion over the same 7-year period?

Or, is it fair to cut $500 billion from domestic spending on education, law enforcement, highways, research, job training, and from student loans, and veteran's medical care while, at the same time, ignoring the subsidies in the Tax Code that total $453 billion in 1995 and which, as I say, will grow by a total of $283.9 billion over the next 5 years, 1995 to 1999. In 1999 alone, these tax breaks will total $568.5 billion, an increase of $115.5 billion over their 1995 cost.

It is incredible—even beyond belief—that Congress would enact a 7-year, deficit-elimination package that cuts $500 billion from domestic investments and cuts between $259 and $333 billion from Medicare, while it cuts nothing from military spending and while we allow permanent tax breaks to grow by $283.9 billion! How can we expect the American people to accept this approach to budget balancing? It is not only unfair, it is irrational.

What this amounts to is protecting the special interest groups and the wealthy. They will get to keep their existing tax breaks, and, to make matters worse, they will also get the overwhelming share of the tax cuts already passed by the House, which amount to a $630 billion drain from the Treasury over the next 10 years.

On a related matter, there has been speculation that the Republican welfare reform package will be included as part of this year's reconciliation measure. If these reports are accurate, this should be a cause of great concern to all Senators and to the American people. I say this not from any partisan perspective. As I stated to the distinguished majority leader in a letter dated March 31, 1995, I agree that welfare reform is certainly necessary. But I have strong reservations about taking up such far-reaching and important legislation as part of a reconciliation measure, upon which very limited debate is allowed.

In my view, the reconciliation process was not intended to allow the adoption of major legislative proposals, such as welfare reform, under conditions where debate is limited. This is not a new position for me. I opposed such a tactic on health care reform last year, when both the then-majority leader and President Clinton urged my support for including health care in last year's reconciliation measure. Major proposals of this kind should be thoroughly and thoughtfully examined by the Members of both parties on this Senate floor in a free and full debate, not under the extremely limited debate that is allowed for reconciliation measures.

I implore the Senate Budget Committee, under the able leadership of its chairman, Senator DOMENICI, and its equally able ranking member, Senator EXON, to carefully consider these very important matters as the committee marks up the 1996 budget resolution.

As I have already stated, I do not believe that the American people deserve, nor will they support, a deficit-elimination package unless its effects are distributed fairly across all segments of the population. I do not believe they will support a continuation of existing tax breaks along with new massive tax cuts for the wealthy, while Medicare beneficiaries are being asked to pony up hundreds of billions of dollars over the next 7 years.

I urge Senators not to attempt to balance the budget on the backs of millions of Americans by savaging their health care benefits, while at the same time enacting hundreds of billions of dollars in new tax breaks which primarily benefit the wealthiest in our society. No amount of hollow rhetoric in a so-called Contract With America can hide the perverted policies being proposed by those who signed this so-called contract which was, after all, fashioned by pollsters for the purpose of gaining political advantage.

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

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

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

NOMINATION OF DR. HENRY FOSTER

Mr. SPECTER. Mr. President, I have sought recognition to announce my intention to vote to confirm Dr. Henry Foster to be Surgeon General of the United States. I hope that I will have the opportunity to cast that vote, that the nomination will come to the floor of the U.S. Senate, and that preliminary proceedings will be cleared so that there will a vote up or down on whether Dr. Henry Foster should become the next Surgeon General of the United States.

When Dr. Foster's name was forwarded to the Senate by the President in early February, I was a little dismayed to hear the cry arise that he should be disqualified because he had performed abortions. I was surprised to hear that cry arise because abortions are a legal medical procedure under the Constitution of the United States. This is not a matter of Roe v. Wade, the decision handed down in 1973. This is reaffirmed by the Supreme Court of the United States in Casey v. Planned Parenthood in 1992, an opinion written by

three Justices—Justice Souter, Justice O'Connor, and Justice Anthony Kennedy, all nominated by Republican Presidents.

So it seemed to me curious, to say the least, that there should be a call for his defeat because he had performed abortions, a medical procedure authorized by the Constitution of the United States.

Then issues were cited about character, about what representations Dr. Foster had made as to how many abortions he had performed. It then came to light that there had been an indication from the White House about some misinformation. Then other issues arose in a variety of contexts.

I believe that the hearings last week have laid all of those issues to rest. Dr. Foster was a compelling witness, a forceful witness on his own behalf and he answered all of the outstanding questions, so that there is no doubt about his good character or about his excellent service as a physician, or about his care for the poor and downtrodden, and about his excellent work as a doctor over many years.

I had occasion to meet personally with Dr. Foster and discuss at some length his own background and the issues which had been raised about him. It seemed to me at that time at that meeting, which was in early February, that his nomination certainly ought to go forward. I did not state at that time support for his nomination because it seemed appropriate to me that we await the hearings by the committee to see what would occur at that time. After reviewing the hearings and what occurred at the hearings, today I am confident that Dr. Foster ought to be confirmed as Surgeon General of the United States and, therefore, announce my intention to vote for him.

I was encouraged to see the media reports that our distinguished majority leader will meet with Dr. Foster, and I am hopeful that that meeting will produce a result that Dr. Foster's nomination will come to the floor.

I note the comments of the distinguished chairman of the committee, Senator KASSEBAUM, that Dr. Foster's nomination ought to come to the floor and ought to be voted upon, although I do not believe at this stage that Senator KASSEBAUM has stated whether her intention is to vote ''aye'' or ''nay'' on the nomination itself.

I am hopeful that there will not be a filibuster, as has been mentioned, on Dr. Foster. Any Senator has the right to handle that in any way that any Senator pleases, and any Senator has a right, as I now express my right to say that I hope that we will not be confronted by a filibuster.

But if we are, Mr. President, it is my sense of the Senate—and this is only one Senator speaking—that a filibuster will be defeated and that even Senators who think that Dr. Foster ought not to be confirmed as Surgeon General of the United States will not support a filibuster; that as a matter of fairness to Dr. Foster, he ought to get his day in court, his day in the Senate for a ''yes'' or ''no'' vote; and that he ought not to have been railroaded out of town, as some have suggested, even without a hearing before the committee; and that he ought not to be railroaded out of town without the matter coming to the floor of the U.S. Senate; and that he ought not to be railroaded, or have his fate decided, without having the Senators vote ''yes'' or ''no'' on his confirmation.

So I am pleased to be in a position today, Mr. President, to say what I sensed when I met with Dr. Foster in early February, that he is truly a man who merits being confirmed as Surgeon General of the United States.

I think that it is time that we put to rest the issue of what is the law of the land of the United States of America with respect to a woman's right to choose. I personally am very much opposed to abortion, but I do not believe that it is a matter that can be controlled by the Government. I believe it is a matter for the woman's choice, it is a matter for the family, it is a matter for priests, rabbis, and ministers, and it is not to be determined by the Government of the United States. When we have decisions of the Supreme Court separated from 1992 back to 1973 and the law of the land stated in Casey v. Planned Parenthood, a decision written by three Justices for a majority of the Court, Justices appointed by Presidents Reagan and Bush, that that is the law of the land, we ought not to reject a nominee because he is performing medical procedures which are authorized by the Constitution.

I think it is time that the Senate of the United States faced up to that proposition squarely. I hope it will be done by having the nomination reported to the Senate floor and by having an up-or-down vote. I intend to vote ''aye,'' and it is my prediction that Dr. Foster will be confirmed.

I thank the Chair and yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from California is recognized to speak up to 15 minutes.

A LOOK BACK AND A LOOK FORWARD

Mrs. FEINSTEIN. Thank you very much, Mr. President.

Mr. President, today, May 8, is V–E Day, which stands for Victory in Europe, and it marks the end of one front of the most disastrous event in modern human history.

The war in Europe was one in which 50 million civilians and military personnel alike died. It was not only a war, but a major crime against humanity.

Two out of three Jews in Europe were scientifically exterminated—a total of 6 million—along with 5 million other victims. In the Soviet Union, 27 million people lost their lives. I visited Leningrad where you see 25,000 people in one mass grave, and these are plot after plot after plot. No country lost as much as did the people of the former Soviet Union.

The war spread death across six of the seven continents and all over the world's oceans. In the end, much of the heart of Western civilization lay in ruins.

Sixteen million one hundred twelve thousand Americans served in the U.S. Armed Forces during World War II, and they knew the ravages of war. Of these, more than 1 million were Californians; 408,000 Americans never came home. To these Californians and these Americans, I want to say you have my deepest respect, and I know I join with all of my Senate colleagues in saying thank you.

For me, I was one of the lucky ones: I was 11 years old, a girl, living in a flat in the Marina District of San Francisco. I remember the blackout shades, the submarine nets under the Golden Gate Bridge, troops shipping out from Fort Mason 6 blocks from my home and the Nike gun emplacements on the marina headlands and in the Presidio. As a lucky one in the land of the free and the home of the brave, for me there was no Auschwitz or Bergen-Belsen.

V–E Day represents a victory over fascism, paranoia and the most devastating war in history, all sparked and guided by one man. Probably the most infamous demagog the world has ever seen, Hitler was described by one of his early associates, Otto Stresser, as a speaker ''who touches each private wound on the raw, liberating the unconscious, exposing its innermost aspirations, telling it most what it wants to hear.''

Jews and Slavs were referred to as ''untermenschen,'' subhumans. Moscow, Leningrad, and Warsaw were hard hit, their industries left in ruins.

In ''Mein Kampf,'' Hitler described what history has shown to be correct. He said:

> The masses more readily fall victim to the big lie than the small lie, since they themselves often tell small lies * * * it would never come into their heads to fabricate colossal untruths, and they would not believe that others have the impudence to distort the truth so infamously.

Millions, indeed, did fall victim to the big lie. Fanatical in his quest for personal power, Hitler withdrew Germany from the League of Nations, aproclaiming that the European powers will ''never act * * * they'll just protest * * * and they will always be too late.''

In fact, the West's hesitance in the face of this evil has sullied the word ''appeasement'' for all time.

By 1943, Hitler held the power of life and death over 80 million Germans and more than twice that number of vanquished people.

After Hitler took his own life on April 30, 1945, and the end of the war

was in sight, devoted followers professed their determination to continue.

A Nazi-controlled newspaper said at the time:

> The heart which beat only for us, the will which blazed only for us, the creative genius which thought and acted only for us, the voice which so often galvanized us—all this no longer exists! However low fate has brought events, Hitler's achievements will illuminate, far into the distant future, the epoch which began with him.

Now, 50 years later, these words offer an ominous warning. Modern-day paranoia, built upon elaborate conspiracy theories and fears, I am sorry to say, is still very much alive today.

For several years, we have seen an escalation in fundamentalist-inspired killings in Egypt and Algeria, the rise of neo-Nazism in Germany, nationalistic fervor in former Communist States, severe anti-immigrant backlash in France, and poison gas attacks in Japan.

The rise of fanaticism and the terrorism it spawns is ever increasing right here in the United States as well.

I think no event embodies this more than the Oklahoma City bombing.

Whatever the final outcome of the investigation into the bombing, a new—and, I believe eye-opening—look at the growing trend of extremism is taking place across the world.

In this country, so-called militias are growing in numbers, stockpiling vast arsenals, preaching hate and violence against this Government.

Here are some examples:

The Federal Emergency Management Agency has orders for Hispanics and African-Americans to be ''rounded up and detained'' in the event of a State of domestic national emergency.

That is false.

They say tax protesters, demonstrators against Government military intervention outside United States borders, and people who maintain weapons in their homes are the next targets.

That is false.

They say that FEMA advocates ''the rounding up and transfer to 'assembly centers or relocation camps' of at least 21 million American Negroes.''

That is false.

They say there are black helicopters with no markings spying on citizens. They say police officers were met by ''armed men in black uniforms,'' reportedly from the Federal Government.

That is false.

They say U.N. troops are training to suppress America's people.

That is false.

They say Somalia was simply a practice run for occupying the United States.

That is false.

They point out that Russian trucks and personnel carriers are being imported as well as ''100-car trains filled with United Nations equipment.''

That is false.

They even say that Crips and Bloods—gangs that dominate some urban areas—are being trained to serve as something called ''shock troops'' and ''cannon fodder'' for house-to-house searches conducted by ''New World Order officers.''

That is false.

So theories about black helicopters, modern day concentration camps, and mass raids abound, we find, throughout this land of the free and home of the brave. Even on Internet, this system is used to spread conspiracy theories across our land. Even a terrorist handbook is run on the Internet on how to build a bomb. I read this handbook, and they tell you how to break into university chemical labs, how to find the chemicals you need, and how to steal those chemicals.

Finally, we see neo-Nazism, even signs popping up here and there saying ''whites only,'' and on and on and on.

One must ask the question on this very special day: Will the threats, the fear mongering, and the paranoia eventually fuel major bloodshed? Was it responsible for encouraging the terrible Oklahoma City bombing?

Two years ago, militia members warned about U.N. troops poised along the United States-Canadian border, ready for invasion. Thirty years ago, the John Birch Society warned of Chinese troops in box cars along the Mexican border. Fifty years ago, the most deadly of all wars ended.

History can teach us lessons if we want to learn. Or we can be doomed to repeat history time and time again.

We all pray that the Oklahoma City bombing is a one-time-only event.

Yet, as a country, this is a time for us to come together, to heal, to begin anew, to straighten with truth vicious lies, to look for what unites us and strengthens us as a people, an American people, to strengthen these bonds, rather than to seek what divides us.

The wounds of the past can guide us in the future. We simply need the determination and the political will to fight the fear and the paranoia that is still so strong in our society.

V–E Day is a chance to celebrate the conclusion of one of the darkest eras in our history. It is a chance to say thank you to those who gave their lives so that we might remain a free people.

Let us use this day to also look deeply at America as it exists today. There is a great deal of work to do to sort it out, to pull this country together before fear and intolerance rips us apart.

It is with the loving memory of the millions and millions of victims of World War II—and the hundreds of victims of the Oklahoma bombing—that I make these remarks today. And I give thanks to those who fought and died in Europe so that we may know freedom.

I thank the Chair and yield the floor.

Mr. GRAMS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota [Mr. GRAMS], is recognized.

PRODUCT LIABILITY

Mr. GRAMS. Mr. President, for the last 2 weeks we have had a serious debate over our Nation's broken liability system.

We have heard stores from supporters of the plaintiff's bar who claim that manufacturers are putting products on the market with little regard for consumer safety.

And we have also heard from supporters of manufacturers who have anecdotes of honest individuals who were sued for multimillion-dollar awards and settled out of court to avoid more costly legal fees, even when they were innocent.

Later today or tomorrow, there will be an effort by supporters of product liability reform to end debate, but before we do that, I wanted to make sure this body heard comments from a few of my constituents

An all-too-familiar story from America's small businesses is exemplified in a letter from Trade Mart Furniture's Jerry Johnson, a constituent from Rochester, MN.

Jerry writes:

> I've experienced firsthand the effects of a frivolous lawsuit. After two years of court appearances, legal fees and countless hours, I won. It cost almost $10,000 to defend myself. I thought the legal system was created to protect the citizen, not the profiteer.

Ann Hartman of Hartman Tree Farms in Victoria, MN, states, ''I am tired of seeing lawyers make so much money off the tragedies of others.''

And a couple from Menahga, MN, who own Burkel Turkey Farms writes:

> The system now is a free-for-all for the money-hungry and the lawyers. There are far too many people out there that feel the system owes them something.
>
> We are at the mercy of dishonest people who are only out for a buck. It's different if a person has a legitimate claim, but something must be done to maintain a fair legal system for the honest people of this world.

Mr. President, these are just a few of the comments I have received throughout my tenure as a representative from Minnesota, and as a small businessman myself, I understand the effects of the threat of a potential lawsuit.

The fact is that almost 90 percent of all U.S. companies can expect to be named in a product liability lawsuit. The present liability system costs Americans $300 billion a year and like most Americans, my Minnesota constituents are concerned about the devastating effects the liability system has on them.

Recent polls continue to show strong support for liability reform: 83 percent believe the present liability system has problems and should be improved, while 89 percent believe that ''too many lawsuits are being filed in America today.''

Our current system benefits the lawyers and the dishonest. It treats both plaintiffs and defendants unfairly. Inconsistent laws force both sides to sacrifice time and money on unpredictable

litigation. Both consumers and manufacturers end up losers. Consumers lose because they receive inadequate compensation. Some estimates have shown that our tort system consumes 57 cents of every $1 awarded in lawsuits.

In addition, consumers wait unreasonable amounts of time before they receive compensation, and often pay outrageous fees to their attorneys.

Manufacturers lose because liability concerns stifle research and development.

A recent survey showed that because of fear of litigation, 47 percent of companies had withdrawn products from the market; 25 percent had discontinued some kind of research; and 8 percent actually had laid off workers.

In fact in 1 year alone, Texas lost 79,000 jobs due to the cost of the liability system.

Each year there are more than 70,000 product liability lawsuits filed in the United States—yet Great Britain only has an average of 200.

Now, this is only one of the reasons liability insurance costs are 20 times higher in the United States than in Europe.

As a result of this well-known liability gold-rush, the United States as a nation loses as well.

According to the Product Liability Coordinating Committee, the cost of product liability ranges from $80 to $120 billion per year.

These costs are passed directly on to you and me as consumers. Appropriately, this is known as the tort tax.

For example, manufacturers of football helmets add $100 to the cost of a $200 helmet. Auto manufacturers add $500 to the price of a new car, and the markers of a $100 stepladder will add another $20 to its cost, just to cover potential liability.

I know many of my colleagues have mentioned this, but I want to reiterate the fact that right here in Washington, DC, the Girl Scout Council must sell 87,000 boxes of Girl Scout cookies each year just to cover the cost of their liability insurance.

In my own State of Minnesota, Attorney General Hubert Humphrey III, the son of Minnesota's great U.S. Senator, recently testified before the State legislature that his office spent $340,000 in 1994 defending Minnesota against frivolous lawsuits. Attorney General Humphrey offered a top-10 list of lawsuits from Minnesota inmates. These are just a few of the ridiculous claims that prisoners have filed:

One prisoner claimed he had a constitutional right to a computer in his jail cell. One claimed that the President gave him a fungus.

Another prisoner claimed underwear was not provided, and when it was provided, it was so tight that it constituted cruel and unusual punishment.

If you think these lawsuits are laughable, try Mr. Humphrey's No. 1 frivolous lawsuit: One prisoner claimed that his primary reason for filing a lawsuit was ''pure delight in spending taxpayers' money.'' I understand that suits like these may be rare. However, they typify the problems with our current system.

The Gorton-Rockefeller Product Liability Fairness Act will address many of the problems faced by well-intentioned, honest manufacturers.

This legislation will establish alternative dispute resolution, extend protection to product sellers, provide an absolute defense for injuries received when the plaintiff was under the influence of drugs or alcohol, and prevent automobile rental companies from being held liable for damages caused by the renters of its cars when the company is not at fault.

In addition, the Gorton-Rockefeller bill will provide much-needed relief to suppliers of biomaterials. Currently, raw material suppliers who have no direct role in the raw material's ultimate use as a biomaterial share extraordinary and irrational liability risk with device manufacturers.

Companies such as DuPont, Dow Chemical, and Dow Corning have decided to stop supplying manufacturers of medical devices with raw materials for fear of lawsuits. This legislation is progress, and is the first step in the right direction.

While I am encouraged by the hard work of the Senators from Washington State and West Virginia, I am concerned that we may be opening up a new can of worms, when this legislation is signed into law.

While it will offer protection for product manufacturers, my fear is that it will leave the service industry as the only remaining deep pocket.

I believe the Senate should continue moving forward to reform our liability system, making sure that individuals who deserve compensation are made whole and that individuals who are not at fault are not held liable for someone else's actions.

Mr. President, we should take this historic opportunity today to approve the Product Liability Fairness Act, and in doing so ensure that our liability system is fair to all parties involved, not just those who are looking for their golden nugget in the liability gold-rush.

EXTENSION OF MORNING BUSINESS

Mr. BRYAN. Mr. President, I ask unanimous consent that morning business be extended until the hour of 12:10.

The ACTING PRESIDENT pro tempore. Hearing no objection, so ordered.

NEI ADVERTISING CAMPAIGN

Mr. BRYAN. Mr. President, I would like to bring to the attention of my colleagues an advertisement currently getting wide circulation by the nuclear power industry.

This advertisement touts the virtues of legislation introduced for the nuclear power industry to address the industry's nuclear waste problem.

As many of my colleagues are aware, the industry's solution to its waste problem has, for a number of years, been very simple: ship the waste to Nevada.

Since 1982, Nevada has been the target of the nuclear powder industry's efforts to move its toxic high-level waste away from reactor sites.

Under current law, Yucca Mountain, 90 miles north of Las Vegas, is being studied, supposedly to determine its suitability as a site for a permanent geologic repository.

The repository program has had immense problems.

With $4.5 billion spent to date on the program, Yucca Mountain is no closer to accepting the nuclear power industry's waste than it was 13 years ago, when Congress passed the first Nuclear Waste Policy Act.

I am not alone in my opinion that a repository will never be built at Yucca Mountain.

The nuclear power industry is also frustrated.

In a curious juxtaposition from the Nevada perspective, the industry thinks the DOE is being too careful, paying too much attention to environmental concerns, and simply not moving fast enough.

While the nuclear power industry still maintains that Nevada is perfectly suitable to host their repository, it has come to the conclusion that Yucca Mountain will never solve its high-level waste problem.

The nuclear power industry has a new solution, and of course, Nevada is once again the victim.

The nuclear power industry's new strategy is to designate Nevada as the site for its interim storage, beginning in 1998.

While the ''interim'' designation is supposed to imply a temporary facility, the nuclear power industry defines ''interim'' as 100 years, subject to renewal.

The motive is patently transparent: ship high level nuclear waste to Nevada as soon as possible, without any regard for the health and safety of Nevadans, and then forget about it.

The type of public relations campaign being mounted here is nothing new.

While we in Nevada have long experience with such campaigns by the nuclear power industry and its hired flacks, I have to admit that this latest advertisement is a masterpiece of deception and misinformation.

The headline alone reveals the deceptiveness of the advertisement.

''There are 109 good reasons to store nuclear waste in 1 place'' proclaims the nuclear industry's advertisement.

The headline appeals to the logic of the reader—of course, the reader thinks, 1 site is better than 109.

The problem is, of course, that the advertisement does not tell the true story.

Unless the nuclear power industry has some well kept secret plan to shut down and decommission every reactor at each of these 109 reactor sites, by my count creation of a new, central site for waste storage makes 110 sites, not 1.

How the nuclear power industry gets down to one site, when its reactors are still running, and waste is still stored in pools on site, is beyond me.

The advertisement also ignores one of the key problems with a central high-level waste facility—the transportation of the toxic waste from the 109 reactor sites to the central facility.

The nuclear power industry, in its obsession to dispose of its waste as quickly as possible, is proposing to create thousands of rolling interim storage facilities, on trucks, and rail cars, in 43 States across the Nation.

The nuclear power industry's map shows the location of the 109 reactor sites, but not the proposed location for the central storage facility.

There is a good reason for this oversight—the industry's target for a central storage facility is not central at all.

Not even close.

Looking at the map, it could not be clearer—only 15 of the 109 sites identified are west of the Missouri River.

This second chart shows the map that the nuclear power industry, if it was being honest, should have run in their advertisement.

This map shows the location of the current reactor sites, the proposed location for their central storage facility, and the likely routes through 43 States for the thousands of shipments necessary to move the high-level waste from around the Nation to Nevada.

It is obvious to even the casual observer that the nuclear power industry's interim storage proposal could result in an unprecedented level of shipments of extremely toxic, highly dangerous radioactive materials.

Every Member of the Senate should take a careful look at this map.

Nothing could make clearer the true scope of what the nuclear power industry is proposing.

Over the years, as I have fought the industry and the DOE in their efforts to open a repository in Nevada, I have often found my colleagues, both here in the Senate and among the Nation's Governors in my previous position, sympathetic to Nevada's cause.

Many in the Senate sympathize with the outrageous abrogation of State's rights.

Others understand the potential environmental risks associated with opening a high-level nuclear waste dump 90 miles from the fastest growing metropolitan area in the United States—a metropolitan area with nearly 1 million residents.

Still others have understood the potentially grave economic damages that could result from the transport and storage of high-level nuclear waste so close to the premier tourist destination in the United States.

Unfortunately, however, these expressions of sympathy have not often translated into action.

For too long, the commercial nuclear waste problem has been identified as a solely Nevada issue.

The general attitude has been we feel badly for Nevada—but if it is not Nevada, who would be the nuclear power industry's next target?

This map should make clear that the nuclear power industry's refusal to accept responsibility for the storage of its own waste will affect every citizen of every State along the routes the industry will use to move the waste.

Even those from the few States that are not targets of the nuclear power industry should be concerned. I do not know how many of anyone's constituents are anxious to share the road with a truck moving high-level nuclear waste.

Once the word is out to these affected communities, no one will be able to continue to dismiss the issue as simply a Nevada problem.

In the absence of a permanent solution to the nuclear waste problem, there is simply no reason to move nuclear waste away from the reactor sites.

The only crisis facing the nuclear power industry is a public relations crisis, not a scientific one.

The NRC has licensed technology to store waste in dry casks, on site, for the next several decades.

Some utilities, of necessity, have taken advantage of this technology.

Most refuse to do so.

Why are utilities so adverse to accepting the responsibility for their own waste? The answer could not be simpler.

Recognizing the political and public relations nightmare of seeking permission to increase storage for high-level waste on site, utilities are seeking an outside solution.

Nevada, a State with no reactors and about as far as you can get from a geographically central location, has been chosen as the target.

Let me return for a moment to the advertisement.

I have not even touched on the misinformation provided by the text.

The ad generally relies on the tried and true tactic of the nuclear power industry to create the impression of impending doom if its demands for relief are not met immediately.

Congress, then, is pressured to act quickly, irrespective of the wishes, or the health and safety, of Nevadans, or anyone else.

This was true in 1980, when the industry claimed that reactors across the Nation would soon shut down if they could not get what was then called away-from-reactor storage by 1983.

No away-from-reactor storage was ever built, and no reactor has ever shut down from lack of storage.

There simply was no crisis in 1980—and there is no crisis now.

It is all an expensive, dangerous ruse.

I urge my colleagues to think carefully before falling for this, and other, deceptive misinformation campaigns by the nuclear power industry and its advocates.

Mr. BINGAMAN addressed the Chair.

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

The Chair informs the Senator from New Mexico that at 12:10 morning business is set to expire unless it is extended.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that morning business be extended for up to 15 minutes, until I conclude my statement.

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

CUBA

Mr. BINGAMAN. Mr. President, I first want to say a few words about our policy toward a neighboring country, Cuba.

The United States objectives in Cuba are not in dispute. Our primary objective is to move Cuba to a more democratic form of government and to a government with a greater respect for human rights. Also, of course, we want to see the lives of the Cuban people improve economically, and we want to see our historically close ties with this island neighbor restored.

First, let us review some of the facts that led us to the present circumstances we find ourselves in. Fidel Castro came to power in Cuba some 34 years ago, when I was still in high school and before several Members of this Congress were even born. He quickly established an authoritarian and anti-United States regime. He declared himself a Marxist-Leninist in December 1961. Early in 1961, the United States broke diplomatic relations with Cuba.

A year later, in February 1962, we imposed a comprehensive trade embargo. The reasons cited for that were three.

First, Castro's expropriation without compensation, much property owned by U.S. citizens, in excess of $1 billion.

Second, the Castro regime's obvious efforts to export revolution to other parts of the world.

And, third, the increasingly close ties that existed then between Castro's Government and the Soviet Union.

That was 33 years ago. During the past 33 years, we have maintained the trade embargo in place. In April 1961, we tried unsuccessfully in the Bay of Pigs to have Castro overthrown militarily. We began in 1985 to use Radio Martí to undermine Cuban support for Fidel Castro, and in the Bush administration just a few years ago we added TV Martí to the mix, as well.

In 1992, we passed the Cuban Democracy Act in an effort to tighten our trade sanctions. This year, we are being urged by some in this body to pass a new and tough measure entitled

''The Cuban Liberty and Democratic Solidarity Act'' in order to give Castro what the supporters of that legislation refer to as the ''final push.''

With all due respect to President Clinton and to many here in Congress, our policy toward Cuba today is still captive of the cold war mentality that created it in the first place. Simply put, the world has changed, and we continue to pretend otherwise.

Mr. President, this is 1995. Our 34-year-old policy of trying to remove or alter the behavior of Fidel Castro by isolating him diplomatically, politically, and economically has failed. History has passed that policy by. And the cold war, which provided much of the rationale for our policy, is now over.

We have normalized relations with China—Communist China, I point out. We have normalized relations with the countries of Eastern Europe and Russia, and with all the former States of the Soviet Union.

This morning, President Clinton goes to Moscow to meet with Boris Yeltsin, not to find ways to isolate Moscow or to impose sanctions on Moscow for their human rights abuses in Chechnya or elsewhere; our President travels to Moscow to strengthen our relations with that important country.

Mr. President, U.S. policy toward Cuba needs to adjust to this new reality, just as our policy toward those other nations has adjusted. For over three decades, we have tried to exclude Cuba from acceptance by other nations. But our policy of trying to isolate Cuba diplomatically has made the United States the odd man out in the world community rather than Cuba. Of the 35-member nations of the Organization of American States, all but 5 recognize the Cuban Government and have normal diplomatic relations with it.

The Senator from North Carolina, who chairs the Senate Foreign Relations Committee, argues that the way out of this absurd situation is to turn up the pressure on Castro. As he says, ''It is time to give Castro the final push.''

Mr. President, the sanctions and the embargoes and the pressure that we put on Castro in the past 34 years have not undermined the support of the Cuban people for his Government as we have wished. In fact, a strong case can be made that the constant menacing by Uncle Sam has been used very effectively by Castro to divert the attention of the Cuban people from the shortcomings of his own Government and his own policies.

Mr. President, this administration has been slow to face the need to change in our policy toward Cuba. But last week, we hopefully saw the beginning of a more rational policy toward that nation. Last week, the administration announced that in the future, illegal immigrants from Cuba will be treated as other illegal immigrants into this country, and I for one hope that more steps will follow.

For example, as I stated here in the Senate several weeks ago, I believe the President should act to end the travel ban on Americans who wish to travel to Cuba. The President should also restore the right of Cuban-Americans to make small remittances to their families and to their relatives in Cuba. In my view, the time has also come when we should begin to normalize trade relations with that country.

Mr. President, I realize that it is politically difficult to change a long-established policy. It is especially difficult given the political posturing that is preceding our upcoming Presidential election. But the time has come to acknowledge that our current policy toward Cuba has failed miserably. NEWT GINGRICH referred yesterday to Cuba as ''a relic of an age that is gone.'' I agree that Castro's Government is an anachronism. But it is no more so than our own misguided policy for dealing with that country.

Most agree that President Nixon's greatest achievement was his decision to change United States foreign policy and move toward normal relations with Communist China. That was many years ago, when the cold war was still very much with us. Now the cold war is over, and a new and a reasonable policy for our relations with Cuba is long overdue.

I for one believe that the responsible course for us to proceed with is to establish a new policy now.

V–E DAY

Mr. BINGAMAN. Mr. President, I would like to make a few statements about the occasion of May 8, 1995, V–E Day.

It is rather difficult to think of any event in the life of a nation more worthy of commemoration than the end of a world war. Remembrance and reflection are crucial if we are to maintain our sense of purpose as a nation, and our appreciation of what we value most.

The service and sacrifice of those who bore the battle at home and overseas in the Second World War can never be overstated. It was that willingness to give unstintingly not only of effort but also, in many cases, their lives, that makes the war years such an extraordinary period in our Nation's history.

Americans who fought the war came from every State in the country, and my home State of New Mexico certainly did its part. Our own friends and neighbors were heroic in their actions, in their service, and in their struggle. If not for their efforts, what would the world be like today?

Franklin Roosevelt, whose death 50 years ago we commemorated on the 12th of last month, left a monumental legacy for this country. Words from a speech that he wrote for delivery on April 13, 1945, had he lived to give that speech, still sound out a challenge, one rooted in the experience of the war and pinned to his knowledge of his countrymen. He wrote for that speech:

> The only limit to our realization of tomorrow will be our doubts of today. Let us move forward with strong and active faith.

We did that in the Second World War. So we must, every day, move forward now from the conflict that threatened to consume the world half a century ago. Without the service and the sacrifice that we honor today, we would have had no future as a nation. It is our obligation to those who secured that future for us to build on it as we approach the new century.

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

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, are we still in morning business?

The PRESIDING OFFICER. We are still in morning business.

THE 50TH ANNIVERSARY OF V–E DAY

Mr. DASCHLE. Mr. President, today marks the 50th anniversary of V–E Day, the day that saw the end of the Second World War in Europe.

From its European beginning on September 1, 1939, with Hitler's invasion of Poland, to the surrender of the German armies in Italy, on April 29, 1945, the war that was supposed to usher in the 1,000-Year Reich ended after 6 years of death, genocide, and destruction on a scale never seen before or since.

The outcome of the war changed our world profoundly, with effects that still resonate today. It left the United States the sole undamaged world power. With that status came responsibilities that most Americans had not imagined at the outset. In the 50 postwar years, those responsibilities have demanded more in American treasure and lives than from any other participant.

European and Japanese cities suffered the destruction of repeated artillery fire and massive carpet bombing. European civilians found themselves uprooted, fleeing desperately from their historic hometowns as massive armies moved back and forth across frontiers. But Americans paid a price, too.

By 1990, it is estimated that the total cost of the Second World War to the United States had reached $4.6 trillion—including the postwar cost of veterans care and benefits. The cost of caring for our veterans is a cost of war, and should be recognized as such, lest we forget, decades later, the price of

war in the form of our greatest treasure—our young men and women who served.

In total, more than 16 million American men and women served their Nation in World War II. More than 291,000 paid the ultimate price on the field of combat; 113,000 others died of wounds, accidents, illness—all the risks and dangers that attend service in wartime. All told, more than 405,000 American lives were cut short by the war.

Another 670,000 Americans were casualties in that war—men and women who returned with their health damaged, their bodies scarred, their lives changed.

Tens of thousands from every State in the Nation served in the Second World War. South Dakota, one of the Nation's least populous States, sent an estimated 60,000 men and women to fight. A postwar review in 1950 estimated that more than 10 percent of the South Dakotans who served earned citations for personal bravery, military valor, and, in three case, the highest military honor our Nation grants, the award for service ''above and beyond the call of duty,'' the Congressional Medal of Honor.

The Medal of Honor is the decoration of which Harry Truman said he would rather have earned than be President.

Two of the three South Dakotans who won the Medal of Honor served in the Pacific War and returned home after the war. One, Joe Foss, became Governor of South Dakota. The third South Dakotan awarded the Medal of Honor served in the European theater. He died there, having established a record that is outstanding, even compared with his peers.

Capt. Arlo L. Olson, of Toronto, South Dakota, served in the Italian campaign in 1943. For 26 grueling days in the mountainous terrain northeast of Naples, he led his company by foot across the Volturno River into enemy-held territory, directly into enemy machine gun emplacement in some of the roughest fighting experienced by any American units in the war. He was shot on October 27, 1943, but refused medical treatment until his men had been taken care of. He died as he was being carried down Monte San Nicola.

The citations honoring South Dakotans are stirring. Harold G. Howey, in July 1943 in Sicily, faced a cliff fortified by the enemy and fought his way to the top under intense enemy fire despite his wounds. He won the Distinguished Service Cross and the Bronze Star Medal for his actions.

David Colombe of Winner leapt into a German foxhole, armed only with a knife, seized an enemy rifle and worked his way behind enemy lines, demoralizing the withdrawing soldiers with heavy fire and leading to the collapse of their defense. His Distinguished Service Cross was well earned.

Like other Americans, South Dakotans were captured. Melvin McNickle, one of the famous McNickle brothers of Doland, both of whom earned the Legion of Merit, maintained morale and discipline and preserved the lives of his fellow internees for 2 years in Stalag Luft III in Germany.

The hometowns of the men and women from South Dakota who fought in the war span the length and breadth of the State. They came from Sioux Falls and Rapid City, Aberdeen and Buffalo, Belle Fourche and Doland, Milbank and Spearfish.

They bore names that reflect the history of our State—Jorgenson, Novotny, Lauer, Kilbride, Rossow, Thompson, Fischer, Haag, Labesky, McGregor, Adams, Bianchi, Soissons, Zweifel—the people who settled South Dakota and became proud Americans from every corner of the Earth. Many of them fought on ground their fathers had called home.

South Dakotans take special pride in the heroism and courage of those like David Colombe of Winner, Vincent Hunts Horse of Wounded Knee—who won the Silver Star for the part he played in helping the United States Army capture Gondorf in Germany—and Sampson One Skunk, who took part in the raid on Dieppe in 1942 and the first attack on Anzio, and won the Silver Star for his exploits.

They are part of a proud and honorable tradition of native Americans who have served courageously and honorably in every U.S. conflict, from the Revolutionary War onward.

Last year Congress finally approved legislation to establish a national memorial acknowledging and honoring the heroism and service of native Americans in combat. The Native American Veterans' Memorial will pay an overdue tribute to those who served their Nation, even when their Nation did not serve them—to those who fought under the U.S. flag before they were even granted citizenship themselves in 1924.

Our Lakota-speaking people played an additional role in the Second World War, one that is now as well known as it deserves to be. They, like Navajo and Choctaw speaking native Americans, were the famous code talkers of the war—the people who manned the radio communications in native languages that no code-breaker or cipher specialist could decode, because language has no breakable code.

There is a monument in Phoenix, AZ, to the code talkers of the Navajo Nation. But there were others besides them. The Lakota speakers of the Sioux Nations of South Dakota and neighboring States were responsible for the safety and lives of thousands of their fellow Americans in combat.

Philip LaBlanc, of Rapid City, served with the 1st Cavalry Division from 1942 to 1945. Others—Baptiste Pumpkinseed, Oglala or Redbud Sioux, Eddie Eagle Boy of the Cheyenne River Sioux, Guy Rondell of the Sisseton-Wahpeton Dakota Nation, John Bear King of Standing Rock—all of them and their comrades manned radio communications networks, using Lakota, to advise of enemy troop movements, numbers of enemy guns, information crucial to saving the lives of other Americans.

These men worked 24 hours around the clock in headphones when the action was heaviest, without rest or sleep. Most famously, they served in the Pacific theater, but there were code talkers in the Italian and German theaters in Europe as well. Their work saved the lives of countless other Americans. Along with the Navajo and Choctaw code talkers, the Lakota code talkers deserve their own page in our national memory of the world war.

Philip LaBlanc himself served for 3 years without a single furlough. He left theater operations only after being hit and wounded by enemy gunfire.

As well as the men who manned the combat fronts in the war, the Second World War was the first one in which American women played a significant role. They did so both at home and abroad.

Although the myth is that the enemy declared total war, it was America who, in fact, declared total war. While Hitler imported slave laborers from Eastern Europe to work for the German housewife, American women ran the factories that were the arsenal of democracy. American women enlisted in support battalions of all kinds on active duty as well.

South Dakotan women were no exception. Edith Bolan of Rapid City raised three children, and worked as a welder during the war. It was her task to crawl into the small spaces that men could not reach to put the finishing touches on Navy ships. She made casings for bombs. She led the life that so many other American women, from coast to coast, experienced in the war.

Those who served on the homefront did not get the medals and citations of those serving in combat. But their work and dedication were every bit as important to the final victory. So was the work of the women closer to the frontlines.

Loretta Hartrich, a native of Sioux Falls, served with the Red Cross in the so-called clubmobiles that traveled with the frontline troops, serving coffee, doughnuts, and morale to the men at the front. The clubmobiles were often in harm's way, and the women who ran them risked death and entrapment when a fast-moving front shifted. Loretta remembers being asked to sing the ''Indian Love Call'' and having every repetition of ''when I'm calling you'' punctuated by German artillery.

American women served as nurses in rear units and on the front, landing on Normandy 4 days after the first Allied troops. They served in communications, administrative, and intelligence work throughout the duration of the war, and they, too, have earned the proud title of veteran.

Today, those once-young men and women are the proud veterans of service in what many have called the last good war. I understand what those words are meant to convey, but for

those who saw active duty, who saw friends die, who felt the sheer brutality of heavy artillery attack or the random terror of combat on unknown, rough terrain against a well-trained and ruthless opponent, there was no good war.

Our cause was good, and it triumphed. But we triumphed at terrible personal cost to those Americans who served.

Some of our Senate colleagues served, and some bear the outward scars. Senator INOUYE, of Hawaii, served with the most decorated unit in the military in Italy campaign, and paid a high price for his valor. Senator DOLE served in Italy with great honor at enormous personal price. The veterans of the war who still serve in Congress were honored last week at a ceremony at the National Archives.

I am proud to serve in the Senate with all of them, and I express my sense of respect for their service, my gratitude as a citizen for their sacrifices, and my great pride, as an American, for the spirit they and their colleagues in arms showed the world more than 50 years ago.

Great celebrations have occurred in the old Allied capitals in Europe to celebrate V–E Day. Another great celebration will be held in Moscow, to celebrate the end of what the Russians call the Great Patriotic War.

In America, there are no huge celebrations. We were the arsenal of democracy in that war, the productive force without which it might not have been won by the Allies. Our people suffered death and injury far from home, for causes and quarrels in which they had no direct stake.

The distance of 50 years does not erase the genuine hardship, difficulties, and pain they suffered or the price many of them paid. It was not a good war because there are no good wars for those in the line of fire. Like every war, it was vicious, uncaring of life, random in its accidents and mistakes, brutal for its participants.

And yet Americans served, and did so with distinction. We ought to take pause to take great pride in the kind of people we are, and to honor the memories of those who paid the ultimate price. Those who served have done more for their fellow citizens and for the future than any words can describe. They are American heroes, one and all, and we salute them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, are we still in morning business?

The PRESIDING OFFICER. Morning business has not been closed.

THE 50TH ANNIVERSARY OF V–E DAY

Mr. DOLE. Mr. President, 50 years ago today, the guns were silenced in Europe, and that continent was at last freed from the tyrants who had plunged it into war.

And across the world on May 8, 1954, there were moments that are remembered today, and will be remembered for generations yet to come.

Here in Washington, at the White House, President Truman spoke to the American people by radio, with these dramatic words:

> This is a solemn and glorious hour. I only wish that Franklin Roosevelt had lived to witness this day. General Eisenhower informs me that the forces of Germany have surrendered to the United Nations. The flags of freedom fly all over Europe.

In New York City, a half a million people crowded into Times Square, and in main streets and town squares across America, smaller crowds gathered to celebrate.

In Paris, the boulevards that Hitler and his armies had once controlled were free again, and the French people rallied under the Arc de Triomphe.

And in London, Winston Churchill spoke before a large crowd, telling the people of Britain, ''This is your victory.'' And many in the crowd shouted back that the victory was his. Later that night, the floodlights illuminated Buckingham Palace, Big Ben, and St. Paul's Cathedral for the first time in 6 years.

Anniversary celebrations are a time for remembering the past, but they are also a time for looking to the future. And as we celebrate this 50th anniversary of the Allied victory, let us remember the lessons that World War II taught us—lessons that hold for us still.

We learned that we cannot turn our backs on what happens in the rest of the world.

We learned that we can never again allow our military to reach low levels of readiness and supplies.

We learned that we cannot appease tyrants and despots, and perhaps above all, we learned the critical importance of American leadership.

Yes, before our involvement, Britain courageously fought on against the odds. And, yes, Russia, after initially siding with the Axis Powers, helped to turn the tide when the Nazis turned against them.

But, the war could not have been won and would not have been won without the commitment, the manpower, and the leadership of the United States. It is that simple.

It was American leadership that built the arsenal of democracy which made victory possible.

It was American leadership that held the Allies together through the darkest days of the war.

And it was American leadership which conquered the forces of tyranny and restored liberty and democracy to Europe.

And when I talk about leadership, I do not mean just the famous names of Roosevelt, Truman, Eisenhower, Marshall, Churchill, and de Gaulle. And I do not just mean the soldiers who fought their way across Europe and the Pacific. For we must also thank those who served at home—the Gold Star moms, the factory workers, and the farmers. Without their contribution and their sacrifice, the war effort could not have been successful.

So, today is a day for all of us to celebrate the triumph of democracy, and to honor those who served and those who paid the ultimate price on behalf of their country.

And the best way we can do that is to rededicate ourselves to the promise that President Reagan made on behalf of America on the beaches of Normandy 11 years ago:

> We will always remember. We will always be proud. We will always be prepared, so we may always be free.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I indicated earlier, I will have a resolution concerning V–E Day, which I hope we will be able to submit to the Democratic leader in the next few moments and have a discussion on that and, hopefully, have a vote on that about 4 o'clock. We still, as I understand it, have a cloture vote at 4 o'clock, plus votes on any amendments that may occur prior to 4 o'clock. Following that, it is our intention to take up the Deutch nomination to be CIA Director, and have that debate this evening and then have the vote tomorrow morning on the nomination.

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

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

PRODUCT LIABILITY BILL

Mr. SPECTER. I thank the Chair.

Mr. President, I have sought recognition to comment about the pending legislation on products liability on which there is a cloture vote scheduled for 4 o'clock this afternoon, that is, a vote to cut off debate.

As I have expressed in the prior debate, it is my view that it would be appropriate to have reform on product liability, providing the reform is very, very carefully crafted.

As I have noted in previous speeches, I have represented both plaintiffs and defendants in personal injury cases. I had one large product liability case, which I litigated many years ago. Actually, it was ultimately settled. But the issue in the case concerning privity and coverage for a passenger in an

automobile was widely noted in the law reviews. I have therefore had occasion to do very extensive research in the area, although that was some substantial time ago.

I believe that a very key provision for limiting frivolous lawsuits would be to tighten up the current mechanism to give greater authority under rule 11 to the judges who sit on those cases to try to influence or discourage frivolous lawsuits.

My reading of the substitute amendment shows that the amendment offered by the distinguished Senator from Colorado, Senator BROWN, an amendment which I supported and which I think would be of substantial help in discouraging frivolous litigation, and therefore a provision which I think ought to be in the bill, has been deleted.

With respect to the issue of punitive damages, I am very reluctant to see the provisions of the current bill enacted into law, because there are so many cases which have been disclosed in product liability litigation where companies, major companies, have made a calculated determination that it is in their financial interest not to make repairs or changes, because the damages awarded in litigation will be lesser than the costs of making the modifications.

Perhaps the most celebrated case—but there are many others like it—is the Pinto case, where the gas tank was left in a very dangerous position in the rear of the car and resulted in explosions when there was impact, a very common kind of accident in automobile driving, rear-end collisions.

As a result of product liability litigation, it was disclosed that there was a memorandum in the files of the defendant company, Ford Motor Co., actually a letter to the National Highway Transportation Safety Administration, in which there was a computation as to what it would cost to pay damages for people injured or killed as a result of the placement of the gas tank, as to what it would cost to make the repairs. The calculated decision was not to make the repairs.

And then you have the famous cases of IUD's made by A.H. Robins, in which it was known for a long period of time they would cause problems for women, such as infections and sterilization.

There were blood cases with AIDS being transmitted, and a failure to take appropriate action. And there were the flammable pajamas. There have been many cases, some even resulting in criminal prosecutions. I discussed many of these cases last week.

So on the current state of the record, my own sense is that there needs to be further refinement of the provision on punitive damages.

The revised bill does contain an amendment offered by the distinguished Senator from Ohio, Senator DEWINE, which would limit punitive damages to small businesses, and small businesses are defined as those having fewer than 25 employees or a net worth of under $500,000. It may be that this provision would go far beyond product liability cases and would affect all ranges of tort litigation, including medical malpractice cases. I do not know if that is the intent.

It also may be that this amendment to protect small businesses does not bear a sufficient nexus to interstate commerce in affecting all tort cases, so that we may be legislating beyond our authority, as interpreted by the Supreme Court of the United States recently in the Lopez case. I think that is another matter which requires some amplification.

I do believe that there is some limitation appropriate on punitive damages where small businesses are involved. I have heard the complaint that a defendant small business is often compelled to make a settlement that it would not make if it was not betting the business on it. I have filed a proposed amendment, and will refile it so it would survive postcloture, if cloture is invoked, so that the amendment will be on record to be considered, which would limit punitive damages to 10 percent of the net worth of a business, so that there would not be a problem of betting the business in litigation.

The substitute also deletes alternative dispute resolution, which I regret to see, because I think that is a way of eliminating many cases from the litigation process, by having alternative dispute resolution, which is a fancy name for arbitration or mediation. That is not present in the current bill.

I express again the concern about totally eliminating joint liability for noneconomic damages as a Federal standard, where some States have elected to do that as a matter of States rights and others have not. I note again my support for the amendment offered by the distinguished Senator from Tennessee, Senator THOMPSON, which would have limited this bill to litigation in Federal courts, which would have been more in accordance with the mood of the Congress and the country now to let the States decide these matters for themselves.

On the issue of joint liability, I am very sympathetic to the claim that some people or some defendants are in it, people or individuals or companies, to a very slight extent—maybe 1 percent—and they have the full responsibility for the verdict. I have filed another possible amendment which would limit joint liability for noneconomic damages if the defendant was not responsible for in excess of 15 percent of the injury, which I think would provide a better balance there.

Again, I will comment about the case involving the death of our late colleague, Senator John Heinz, where there was a collision between a helicopter and the plane in which Senator Heinz was a passenger. The planes fell into a schoolyard where there were children on the ground, and some were killed and some were injured. Those victims could not have been compensated fully if joint liability had been eliminated.

While it is always a difficult choice as to who will bear the loss, and difficult for some defendants who are involved to a lesser extent where other defendants are insolvent, but as between injured plaintiffs who are not responsible at all for what has happened and those who have been held liable and are subject to payment for joint liability, my own sense is that there ought not to be the total elimination of joint liability for noneconomic damages, which is the thrust of the present legislation.

I am hopeful, Mr. President, that we can craft legislation which will make an improvement in product liability litigation. But on the current state of the record, I think the substitute still does not address the real needs of consumers and does not strike an appropriate balance between those who are sued and those who are bringing claims.

I thank the Chair and I yield the floor.

COMMEMORATING THE 50TH ANNIVERSARY OF THE FORCED MARCH OF AMERICAN PRISONERS OF WAR FROM STALAG LUFT IV

Mr. WARNER. Mr. President, today we commemorate the 50th anniversary of the end of World War II in Europe. Victory in Europe Day is one of the milestone dates of this century. I rise today to honor a group of Americans who made a large contribution to the Allied victory in Europe while also enduring more than their fair share of personal suffering and sacrifice: The brave men who were prisoners of war.

I believe it is appropriate to commemorate our World War II POW's by describing one incident from the war that is emblematic of the unique service rendered by those special people. This is the story of an 86-day, 488-mile forced march that commenced at a POW camp known as Stalag Luft IV, near Gross Tychon, Poland, on February 6, 1945, and ended in Halle, Germany on April 26, 1945. The ordeal of the 9,500 men, most of whom were U.S. Army Air Force Bomber Command noncommissioned officers, who suffered through incredible hardships on the march yet survived, stands as an everlasting testimonial to the triumph of the American spirit over immeasurable adversity and of the indomitable ability of camaraderie, teamwork, and fortitude to overcome brutality, horrible conditions, and human suffering.

Bomber crews shot down over Axis countries often went through terrifying experiences even before being confined in concentration camps. Flying through withering flak, while also having to fight off enemy fighters, the bomber crews routinely saw other aircraft in their formations blown to bits

or turned into fiery coffins. Those who were taken POW had to endure their own planes being shot down or otherwise damaged sufficiently to cause the crews to bail out. Often crewmates—close friends—did not make it out of the burning aircraft. Those lucky enough to see their parachutes open, had to then go through a perilous descent amid flak and gunfire from the ground.

Many crews were then captured by incensed civilians who had seen their property destroyed or had loved ones killed or maimed by Allied bombs. Those civilians at times would beat, spit upon, or even try to lynch the captured crews. And in the case of Stalag Luft IV, once the POW's had arrived at the railroad station near the camp, though exhausted, unfed, and often wounded, many were forced to run the 2 miles to the camp at the points of bayonets. Those who dropped behind were either bayonetted or bitten on the legs by police dogs. And all that was just the prelude to their incarceration where they were underfed, overcrowded, and often maltreated.

In February 1945, the Soviet offensive was rapidly pushing toward Stalag Luft IV. The German High Command determined that it was necessary that the POW's be evacuated and moved into Germany. But by that stage of the war, German materiel was at a premium, and neither sufficient railcars nor trucks were available to move prisoners. Therefore the decision was made to move the Allied prisoners by foot in a forced road march.

The 86-day march was, by all accounts, savage. Men who for months, and in some cases years, had been denied proper nutrition, personal hygiene, and medical care, were forced to do something that would be difficult for well-nourished, healthy, and appropriately trained infantry soldiers to accomplish. The late Doctor [Major] Leslie Caplan, an American flight surgeon who was the chief medical officer for the 2,500-man section C from Stalag Luft IV, summed up the march up this year:

> It was a march of great hardship * * * (W)e marched long distances in bitter weather and on starvation rations. We lived in filth and slept in open fields or barns. Cothing, medical facilities and sanitary facilities were utterly inadequate. Hundreds of men suffered from malnutrition, exposure, trench foot, exhaustion, dysentery, tuberculosis, and other diseases.

A number of American POW's on the march did not survive. Others suffered amputations of limbs or appendages while many more endured maladies that remained or will remain with them for the remainder of their lives. For nearly 500 miles and over 86 days, enduring unbelievably inhumane conditions, the men from Stalag Luft IV walked, limped and, in some cases, crawled onward until they reached the end of their march, with their liberation by the American 104th Infantry Division on April 26, 1945.

Unfortunately, the story of the men of Stalag Luft IV, replete with tales of the selfless and often heroic deeds of prisoners looking after other prisoners and helping each other to survive under deplorable conditions, is not well known. I therefore rise today to bring their saga of victory over incredible adversity to the attention of my colleagues. I trust that these comments will serve as a springboard for a wider awareness among the American people of what the prisoners from Stalag Luft IV—and all prisoner of war camps—endured in the pursuit of freedom.

I especially want to honor three Stalag Luft IV veterans who endured and survived the march. Cpl. Bob McVicker, a fellow Virginian from Alexandria, S. Sgt. Ralph Pippens of Alexandria, LA, and Sgt. Arthur Duchesneau of Daytona Beach, FL, brought this important piece of history to my attention and provided me with in-depth information, to include testimony by Dr. Caplan, articles, personal diaries and photographs.

Mr. McVicker, Mr. Pippens, and Mr. Duchesneau, at different points along the march, were each too impaired to walk under their own power. Mr. McVicker suffered frostbite to the extent that Dr. Caplan told him, along the way, that he would likely lose his hands and feet—miraculously, he did not; Mr. Pippens was too weak from malnutrition to walk on his own during the initial stages of the march; and Mr. Duchesneau almost became completely incapacitated from dysentery. By the end of the march, all three men had lost so much weight that their bodies were mere shells of what they had been prior to their capture—Mr. McVicker, for example, at 5 foot, 8 inches, weighed but 80 pounds. Yet they each survived, mostly because of the efforts of the other two—American crewmates compassionately and selflessly helping buddies in need.

Mr. President, I am sure that my colleagues join me in saluting Mr. McVicker, Mr. Pippens, Mr. Duchesneau, the late Dr. Caplan, the other survivors of the Stalag Luft IV march, and all the brave Americans who were prisoners of war in World War II. Their service was twofold: first as fighting men putting their lives on the line, each day, in the cause of freedom and then as prisoners of war, stoically enduring incredible hardships and showing their captors that the American spirit cannot be broken, no matter how terrible the conditions. We owe them a great debt of gratitude and the memory of their service our undying respect.

FRANKLIN, NH, MARKS ITS CENTENNIAL

Mr. GREGG. Mr. President, I ask my Senate colleagues to join me in recognizing the city of Franklin, NH, on the occasion of its centennial and in appreciation of the contributions its citizens have made to our Nation.

Founded at a gathering spot of the Penacook Tribe, where the Pemigewasset and Winnipesaukee Rivers meet to form the Merrimack River, Franklin proudly traces its roots deep into the history of our State and our Nation. It is here, at the original settlement of Lower Falls, where Franklin's most famous native son, Daniel Webster, would commence a career as lawyer and statesman and, eventually, go on to establish both an honored place in this Senate and a prominent role in the shaping of America.

From this settlement, Capt. Ebenezer Webster, Daniel's father, would lead a company of local men to earn distinction in the Revolutionary War and help win the independence of a new nation. Their heroics during the campaign at Saratoga begins an unbroken line of Franklin's sons and daughters serving our Nation and the cause of liberty with honor, loyalty, and valor.

Successful in commerce, Franklin was incorporated as a town in 1828 and as the city of Franklin in 1895. The historic mill town would give rise to the engineering ingenuity of Boston John Clark and the technological innovations of Walter Aiken and make significant economic contributions to our society. Spurring inventions from the deceptively simple hacksaw and the latch needle to the complexity of the circular knitting machine, Franklin would again play a pivotal role in the second industrial revolution, which propelled us forward as a modern nation.

Today, the city of Franklin continues to exhibit the character and enterprise of its distinguished past. Hardworking, first in citizenship, and steadfast in its sense of community, Franklin continues to show the can-do spirit that marked its beginnings and first 100 years as a city. Recently, named one of the 100 best small communities in America, a base for advanced industry, rich in heritage, and energetic in shaping its future, Franklin is truly a ''Small City on the Move.''

Join me to proudly salute Franklin, NH, the birthplace of Daniel Webster, and the enterprising spirit that has enriched a community, the State of New Hampshire, and our Nation.

V–E DAY 1995

Mr. CRAIG. Mr. President, 50 years ago, U.S. forces, along with those of our valiant and embattled allies, formally ended the victorious struggle to contain a horrific evil that had spread across the European continent. For those Americans who attended the ceremonies that marked the Nazi surrender, it was a solemn moment, for the struggle had been long and bloody, and the price to defend freedom had come at a very high cost. For the world there was joy, renewed hope of lasting peace, and resolve to protect the freedom for which so many had offered up their lives. Today many of those hopes which are held deeply in the hearts of

the veterans who served, their families, and a generation of Americans who lived through the war, have become a reality.

For Americans too young to remember the war and those born into this world in its aftermath, we have a special obligation this day to our parents, our grandparents, and to our children and future generations of Americans; 50 years from today most of those who remember the war will no longer be with us. It is, therefore, our responsibility to learn about what happened, and why it happened. We must ask those who fought in World War II what it was all about. We must remember the sufferings and the sacrifice, lest we become complacent with our freedom and suffer the consequences. We must all, every one of us, learn from our own history. Now, 50 years later, we must redouble our efforts to understand by talking to those who were there, those who remember it.

Americans who lived through this time and made the sacrifices, have one last talk. It is now your duty to pass on to those of us who weren't on the battlefields of Europe, or fighting on the ''homefront'' what happened during the war, so that we can learn from your experiences and pass along to future generations from the lesson's of the power of hatred and the price of protecting freedom for all.

This day I encourage parents and grandparents to take some time to talk to your children and grandchildren about World War II. You heroic veterans, tell them about the terrifying face of battle. Do not try to protect them from the brutal images that you have carried with you for all these years. Those of you who fought on the homefront, tell them about the hardships of home, the fears, the rationing; the friends, loved ones, and neighbors who never came home. Tell them why it all happened. Tell them about the price of acquiescence, isolation, and complacency.

You children and grandchildren, the future of the world, go to your grandparents and parents, call them on the phone, and ask them what it was like. And, take the time to read about it, and understand that they bought you the freedom that we now enjoy. Ask them how they felt when its future was uncertain. They remember, they will be glad to tell you. Listen hard, as if your life depends on it, because it does. And thank them for what they have done for you. Your job is never to forget the stories they have to tell you. Your job is to learn those lessons now so that your children will never again be called upon to smite such evil from the Earth.

This is also a day when all of us should turn, particularly to those veterans who live among us, and offer to them our humble and loving thanks. The great State of Idaho sent thousands of men off to war in Europe. Many, many of them never again laid their eyes on the mountains, deserts, the forest, of Idaho, and lay buried in foreign graves. The veterans who still walk among us, might have suffered the same fate, if God had not chosen for them a different path. They risked their young lives for us, and suffered unimaginable horrors, so that we might not have to. The people of Idaho, the Nation, and the world, owe them everything.

Once in a while, as we live our busy lives with all of the challenges and trials that accompany them, we get the chance to stop and think about why we are able to live in this, the greatest Nation on Earth, in such freedom. Today is such a day. When envisioning the drama and pain of that conflict become difficult to imagine, draw upon those who lived through it, and learn from them.

And as we pay solemn tribute to the memories of the victims, and the survivors, the brave, and the victorious, let us be mindful of what led to this terrible war and thankful to those who fought it. Let us not forget the cost of freedom. And let us pray that God give us peace.

IN SUPPORT OF OUR NEIGHBORS, FRIENDS, THE FEDERAL EMPLOYEES

Mr. LEAHY. Mr. President, for the last two decades, our Federal employees seem to be handy scapegoats for anything that goes wrong with Government. Whenever anyone on this floor mentions ''those Federal bureaucrats,'' the syntax is generally pejorative and the reference, unflattering. The collective term ''bureaucracy'' is uttered in the same tone of revulsion reserved for former leaders of the ''evil empire.''

So it was refreshing to read an editorial in last Saturday's Times-Argus, which serves our State capital of Montpelier, VT.

The editorial simply reminds us that many victims of the Oklahoma City bomb explosion were ''our friends, neighbors, brothers, and sisters who work for the Federal Government.''

It seems to needful reminder in these times to be a little more respectful of the effort we get every day from millions of these men and women who work for us in every capacity, from guarding our national security to protecting our rights as citizens, from fighting crime to enforcing public health and safety standards, from exploring space to cleaning up our air and water here on Earth.

I ask that this editorial be reprinted in the CONGRESSIONAL RECORD. I am not suggesting that criticism of Government operations is off limits. I am only asking that it be fair. The hundreds of Federal workers in my State of Vermont, are among the most dedicated and hard working men and women, in public or private life, in our country. Let us stop careless impugning of their professional integrity.

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

[From the Times Argus, May 6, 1995]

NEIGHBORS, FRIENDS

One of the results of the bombing attack on the federal building in Oklahoma City has been to put a human face on the entity known as the ''federal government.''

The people whose job it was to hand out Social Security checks, to enforce the laws about drugs and firearms, or to recruit people for the military were the neighbors, friends, brothers, sisters of the people of Oklahoma City.

In Vermont the federal government consists of Forest Service rangers and office workers, agriculture specialists, the Marine recruiter, the Social Security workers, the court personnel and others who live every day among us. These are our neighbors, friends, brothers, sisters.

And yet to hear the more virulent strains of attack emanating from anti-government extremists, these people are an exotic combination of Nazi, Communist and Genghis Khan.

A Colorado talk show host, responding to a caller who thought it was a good idea to shoot members of Congress, advocated ''armed revolution.''

A talk show host in Arizona suggested that Sarah Brady, the gun control advocate and wife of President Reagan's former press secretary, ought to be ''put down'' the way a veterinarian puts down a lame horse.

And, of course, the advice of Watergate burglar G. Gordon Liddy to shoot for the head when confronted by federal agents has become a famous example of the antigovernment rhetoric that has become so common.

Imagine for a moment that it was the Rev. Jesse Jackson or Ralph Nader or Patricia Ireland who was advising people to shoot government workers. Would conservatives hesitate for a moment in pointing out that such violent language may be less than conducive to the good of the public weal? Yet when President Clinton made the rather tentative suggestion that this language was really not so helpful, media incidiarists whined that they were being unfairly attacked.

Back in the 1960s anti-war dissenters, black power advocates, and other dissatisfied souls said a lot of stupid things that embarrassed even those who opposed the war or supported the civil rights struggle. Talk then of armed revolution was a naive delusion that was taken all too seriously by a few people, who sometimes ended up getting innocent people killed.

A lot of stupid things are being said again about our friends, neighbors, brothers, sisters who work for the federal government. In the West, there are soreheads with a grievance about the way the federal government manages public lands who are preventing federal workers from doing their jobs.

Everybody ought to remember that federal lands in the West do not belong only to the people who live there. They belong to all of us. We have people working for us to manage our lands. And people who don't like the way they are being managed have a democratic process to avail themselves of to change things.

It wasn't true in the 1960s, and it isn't true now: Our government is not a dictatorship, and armed revolution is not justifiable. The government in Oklahoma, in Boise or in Montpelier consists of our friends, neighbors, brothers and sisters, who, like the rest of us, are not always right about everything they do. But that's the great thing about democracy: We have peaceful methods for making

changes. We also have the duty to hold accountable those who break the law in an effort to attack our system.

VICTORY IN EUROPE DAY

Ms. MIKULSKI. Mr. President, today we are commemorating one of the proudest days in our history—Victory in Europe Day. World War II was no less than a triumph of good over evil. As President Harry Truman said, it was ''a solemn and glorious hour.'' Today we celebrate our victory over the Nazis—and we honor those who gave their lives in the most deadly conflict we have ever seen.

But most of all, we honor the Americans whose personal sacrifices gave us our greatest victory. In Maryland, thousands left factories, shops, and farms to fight on the front lines. People like my uncles Pete, Fred, Richard, and Florene. We also honor those on the homefront who kept the steel mills and shipyards going 24 hours a day to serve the war effort. That includes the women—the Rosie the Riveters who kept America going while our boys fought on the battlefields.

Eleanor Roosevelt said that those days were no ordinary time and that no ordinary solutions would be sufficient to defeat the enemies of America and Western civilization. No only was this no ordinary time, this was no ordinary generation.

I was a child during the War. I grew up seeing the heroism and patriotism of our soldiers—and seeing America united behind a common goal. I saw the sacrifices that individuals were willing to make for our country. That was the only America I knew.

Our veterans of World War II are each a symbol of the principles that have kept this country strong and free. When we think of our veterans, we think of everything that is good about this country—patriotism, courage, loyalty, duty and honor. Our responsibility is to live up to the standards they have set—to foster a new sense of citizenship and a new sense of duty.

That is why it troubles me that too often, young Americans do not learn enough about this special generation. It is our responsibility to honor our Nation's veterans—not just on V–E Day—but every day. Let us honor them in our homes, our schools, our churches, and our synagogues. And here in the U.S. Senate—when we set funding for veterans health care and pensions.

Every day that we live in freedom, we should remember that their triumph was democracy's greatest victory.

THE 50TH ANNIVERSARY OF VICTORY IN EUROPE

Mr. DODD. Mr. President, today marks the anniversary of one of the most important moments in modern Western history. Fifty years ago today, the Allied Powers accepted the unconditional surrender of Nazi Germany, ending the most devastating war in world history. It was a great victory for freedom and for civilization.

The Allied victory was one of courage, valor and enormous sacrifice. Of the hundreds of major battles fought during the war, 15 resulted in casualties numbering no less than 5,000. From the beaches at Omaha to the great campaigns in Europe, American lives were sacrificed in the name of freedom.

The victory in Europe marked the end of unparalleled human horror and of catastrophic human loss on that continent. It signified the end of one of civilization's darkest moments. In essence, V–E Day marked the very rebirth of life in Europe's scarred, and war-torn landscape. But that rebirth did not come without a price.

We must never forget the sacrifices made to ensure our final victory. Of the 400,000 American soldiers who died in this horrible war, most lost their lives on the ground, in the trenches—literally clawing for victory inch by inch. The magnitude of the human price of this effort should command our deepest personal respect. We can never adequately thank our veterans for their supreme sacrifice.

Yet, through the images of fire and the remnants of ashes rises the hope that never again will we face such darkness. Never again will we face the prospect of such global sacrifice. Never again will the forces of freedom be asked to lay down their lives en masse in the name of peace and order.

Today marks the seminal moment in the American chapter of the War in Europe. It reminds us of our absolute resolve to maintain and preserve what is right and just. I join my colleagues in what is perhaps one of our most solemn moments in recognition of those who sacrificed so much for our freedom.

Mr. President, in honor of our fallen veterans, I rise in humble tribute.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES.

Mr. HELMS. Mr. President, more than 3 years ago I began these daily reports to the Senate making a matter of record the exact Federal debt as of close of business the previous day.

As of the close of business Friday, April 28, the exact Federal debt stood at $4,857,682,676,296.70, meaning that on a per capita basis, every man, woman, and child in America owes $18,439.85 as his or her share of the Federal debt.

It's important to note, Mr. President, that the United States had an opportunity to begin controlling the Federal debt by implementing a balanced budget amendment to the Constitution. Unfortunately, the Senate did not seize its first opportunity to control this debt—but there will be another chance during the 104th Congress.

A PERSONAL REMEMBRANCE OF V–E DAY

Mr. LEVIN. Mr. President, this morning Samuel Pisar, a distinguished survivor of the Nazi death camps at Auschwitz, Sachsenhausen, Leonberg, and Dachau delivered the keynote address at the U.S. Holocaust Memorial Museum's commemoration of the 50th anniversary of V–E Day.

I was very moved by Mr. Pisar's expression of gratitude to his liberators, the U.S. Army. He recounted his first words to the GI in the American tank which rescued him, ''I . . . summoned the few English words my mother used to sigh while dreaming of our deliverance, and yelled: 'God Bless America!' ''

That gratitude, in Mr. Pisar's words, ''as intense as it was 50 years ago,'' serves to remind us all of the role which America has and continues today to play in the world as a beacon of hope for oppressed people.

I ask unanimous consent that the excerpt of Samuel Pisar's address printed Sunday in the Washington Post be printed in the CONGRESSIONAL RECORD.

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

[From the Washington Post, May 7, 1995]

ESCAPE FROM DACHAU: MY OWN, PRIVATE V–E DAY—FOR PRISONER B–1317, SALVATION WAS A U.S. ARMY TANK

(By Samuel Pisar)

World War II was coming to an end, yet we in the death camps knew nothing. What is happening in the world outside? Does anyone out there know what is happening here to us? Do they care? I was 15 years old, and I wanted to live.

The day the Allies landed on the beaches of Normandy had been for us a day like any other. The toll in the gas chambers that day was higher than the losses suffered by the combined armies under Gen. Eisenhower's command on this, their longest day.

Judging by the brutality of our guards, we had every reason to believe that all of Europe was irrevocably lost, the Red Army smashed, England fighting alone, its back to the wall, against the seemingly invincible forces of darkness. And America? America was so unprepared, so divided, so far away. How could she be expected to reverse the collapse of civilization at this penultimate stage?

It took weeks for news of the U.S.-led invasion, beamed by the BBC from London, across occupied Europe, to slip into Auschwitz. There was also an amazing rumor that the Russians had mounted a powerful offensive on the Eastern front.

Incredible! So God had not turned His face from the world after all. Could a miracle still prevent the millenium of the Third Reich? Oh to hang on, to hang on a little longer!

We could guess from the Nazis' mounting nervousness that the weight of battle was changing decisively. With the ground shrinking under their feet, they began herding us deeper and deeper into Germany. I was shunted to Sachsenhausen near Berlin, then Leonberg near Stuttgart, then Dachau near Munich—camps normally reserved for political prisoners, common criminals and homosexuals.

It was a slave-labor enclave 50 miles away that I heard the silence of night torn by powerful explosions. Fellow inmates with military experience thought it sounded like artillery. Within hours, we were lined up to be evacuated, ahead of the ''enemy advance.'' These forbidden words, never before heard, and even names of ''enemy'' commanders—Zhukov, Montgomery, Patton—were now openly murmured.

I was beside myself with excitement. Who are these merciful saviors—Russians? British? American? Salvation seemed so near, and yet so far away.

Just as the hope of pulling through became more real, the danger increased. We were headed back to Dachau, which meant that at the last moment our torturers would destroy us. The final solution must be completed, the witnesses of the crime wiped out.

The death march, through winding back roads, continued day and night, halting only for meager rations of bread and water. At dawn, on the third day, of squardron of Allied fighter planes, mistaking our column for Wehrmacht troops, swooped down low to strafe us.

As the SS-men hit the dirt, their machine gun blazing in all directions, someone near me shouted ''run for it!'' A group of us kicked off our wooden clogs and made a clumsy, uncoordinated sprint for the trees. The fire caught most of us. Only I and five others made it into the forest alive.

We ran and ran, gasping for breath, until we were sure there was no pursuit. After nightfall we began to move toward the Western front. When we came close we decided to lie low, until the German retreat had passed us by.

One bucolic afternoon, holed up in the hayloft of an abandoned Bavarian barn, I became aware of a hum, like a swarm of bees, only louder, metallic, unearthly. I peeped through a crack in the wooded slats. Straight ahead, across the field, a huge tank leading a long, armored convoy lumbered my way.

From somewhere to one side I could hear the sound of exploding mortars. The tank's long cannon lifted its round head, turned slowly and let loose a deafening blast. The firing stopped. The tank resumed its cautious advance.

Automatically, I looked for the hateful swastika, but there was none. Instead I saw an unfamiliar emblem—a five-pointed white star.

In an instant the unimaginable flooded my mind and my soul. After four years in the pit of the inferno, I, convict No. B–1713, also known as Samuel Pisar, son of a loving family that has been wiped off the earth, have actually survived to behold the glorious insignia of the United States Army.

My skull seemed to burst. With a wild roar I stormed outside and darted toward the wondrous vision. I was still running, waving my arms, when suddenly the hatch of an armored vehicle opened, and black face, shielded by helmet and goggles, emerged, swearing at me unintelligibly.

Having dodged death daily for so long, at the awesome moment I felt immortal, though to the G.I. my condition, at the heart of a battlefield, must have seemed desperate. Pistol in hand, he jumped to the ground to examine me more closely, as if to make sure the kid was not booby-trapped.

To signal that I was a friend, and in need of help, I fell at his feet, summoned the few English words my mother used to sigh while dreaming of our deliverance, and yelled: ''God Bless America!''

With an unmistakable gesture, the tall American motioned me to get up, and lifted me through the hatch—into the womb of freedom.

On V–E Day 1995, my gratitude to this blessed land, never trampled by tyrants or invaders, is a intense as it was 50 years ago, on that German battlefield. So is my conviction that the five-pointed star, which brought me life and freedom, must remain a symbol of hope to all victims of ethnic hatred, religious intolerance and terrorist violence.

V-E DAY—A VICTORY FOR AMERICAN VALUES

Mr. PRESSLER. Mr. President, today I join my fellow Americans and millions of freedom-loving people around the world in celebrating the 50th anniversary of Victory in Europe Day.

I am enormously proud of the South Dakotans who answered their Nation's call to free Europe from Nazi terror. The 34th Infantry Division—the first American division to serve in the European theater—included three South Dakota National Guard units: the 109th Engineer Battalion, the 109th Quartermaster Regiment, and the 132d Engineer Regiment. South Dakotans were with Eisenhower, Patton, and Bradley when they invaded North Africa in 1942 and Italy in 1943.

More than 2,200 South Dakota National Guardsmen served on active duty. More than 41,000 South Dakotans between the ages of 21 and 36 were called into military service through the draft and 23,192 South Dakotans enlisted. Hundreds more served as State guardsmen to respond to civil and military emergencies at home.

South Dakota was a temporary home to many of our brave soldiers in training. The Sioux Falls Training Base provided technical instruction to 45,000 servicemen. Pierre and Rapid City were sites for airbases. The latter would ultimately become Ellsworth Air Force Base. Watertown and Mitchell served as subbases for the Army. Provo was the site of the Black Hills or Igloo Ordnance Depot. And an area in the Badlands, known as the Gunnery Range, was used for bombing practice by the military.

I join with all Americans in saluting the enormous contributions of our native Americans from South Dakota in the war effort. Congressman Ben Reifel—born on the Rosebud Reservation—was in the Army Reserve when called to active duty in 1942. He served in Europe. Reifel reached the rank of lieutenant colonel by the time of his discharge after the war.

The Lakota and Dakota code talkers' contributions deserve special recognition. Their service back then was invaluable. Their story is still legendary and a source of pride to all Americans.

My former colleague and dear friend Senator George McGovern was a World War II veteran and hero. As an Army Air Corps pilot, Senator McGovern flew 35 bombing missions over Europe in a 6-month period. He also received the Distinguished Flying Cross for safely crash-landing his B–24 bomber—the *Dakota Queen*—on an island in the Adriatic Sea.

South Dakotans know well the heroism of Msgr. Francis Sampson, known as the Jumping Padre. Monsignor Sampson was a paratrooper—one of the first American liberators in the 82d and 101st Airbornes to set foot on European soil on D–Day. He was captured by the Nazi Army, escaped and was captured again, spending the rest of the war in a German prison camp.

Mr. President, the greatest share of gratitude and tribute we owe to our American and Allied veterans—living and dead. For it is they who put their lives on the line so that their children and grandchildren could live in a world free of Nazi terror. From the shores of Normandy to the forests of the Ardennes, American veterans pryed open Hitler's tyrannical stranglehold over Europe. But we must not forget Americans at home. It was just as much a Victory in America as it was a Victory in Europe.

South Dakotans will never forget the tremendous service of Governors Harlan J. Bushfield and M.Q. Sharpe, who met the enormous challenges of raising the State's National Guard and organizing civil defense drills and bond drives throughout the war years.

South Dakotans volunteered and raised funds for eight United Service Organization [USO] clubs in South Dakota. These USO clubs were much needed to boost morale among the troops stationed in our State.

South Dakotans young and old dug deep into their pockets and piggy banks to keep American troops armed, fed, and clothed. During eight national fund-raising campaigns, South Dakota exceeded its quotas. South Dakota consistently ranked first or second in the per capita sale of the Series ''E'' war bonds, known as people's bonds. In total, South Dakotans raised $111.5 million from the sale of people's bonds—that's $173 for every South Dakotan adult and child. Some South Dakotans even sacrificed their homes and property for the war effort.

South Dakotans worked overtime in the fields and factories of our State growing the food and building the supplies for our troops. Workers in the K.O. Lee Co. of Aberdeen made grinders and keyless drill chucks. The Dakota Sash and Door Company, also of Aberdeen, constructed wooden shell boxes. The Nichols Co., located in Spencer, manufactured leather carbine scabbards for jeeps.

Mr. President, I could go on and on to note the tremendous accomplishments of my State to the war effort. It is a story that each one of my colleagues could echo. Each State, each American had a hand in the victory. Our hearts and minds were with our courageous American forces overseas. They answered the call. They stood face to face with Hitler's machine of hate and oppression. They turned the tide of Nazi aggression.

But we could not have won on the European front without a victory on the home front. Our American forces in Europe were the best trained, best fed, and best supplied liberating force ever constructed on the planet. They were the best ever abroad because we were the best ever at home.

Let there be no mistake. The twisted power and oppression of Nazi terror, hatred, and Holocaust were no match for the collective powers of freedom, of democracy, of individual initiative—the very essence of America. Today, we honor the 50th anniversary of that victory. We honor that victory every day so long as we continue to stand for these values at home and abroad.

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Nevada.

Mr. REID. Mr. President, what is the issue now before the body?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

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

The bill clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

Coverdell/Dole amendment No. 690 (to Amendment No. 596), in the nature of a substitute.

Mr. REID. Mr. President, in the State of Nevada, and particularly in Las Vegas, we have some great illusionists. The most famous are two men by the name of Siegfried and Roy. Every night, twice a night, they are sold out. Presently, they are at the Mirage Hotel and have been there for the last 4 or 5 years.

These illusionists, as great as they are, should be taking lessons from what is going on in the Congress today and during the past several weeks. We are talking about things that are really illusionary. For example, there has been a hue and cry that everything should be turned back to the States, that the States should make the decisions on their own destiny. All we hear is that we should leave them alone and let the States decide what is best for them.

In the so-called Contract With America, that is what they talk about—returning as much back to the States as they could. But here we are, Mr. President, now talking about tort reform and standing that issue on its head. Instead of returning everything back to the States, we are saying in this area that we do not want the States to prevail, we want to have a national standard, which is really unusual to me to find out how people could reason that way.

For example, Mr. President, the State of Washington does not allow punitive damages. I think the State of Washington is wrong. But that is a decision they made with their State legislature and the Governor.

Would it not be wrong, Mr. President, if all States had to follow the same law as it relates to innkeepers, that we have in the State of Nevada. In the State of Nevada we have over—in Las Vegas alone—over 100,000 rooms, more rooms in Las Vegas than any other city in the world.

The State of Nevada basically is a resort State. Would it not be wrong for the laws of the State of Alabama as it relates to innkeepers to be the same as the State of Nevada? Of course, it would. We have special problems with tort law as it relates to innkeepers. Therefore, the State of Nevada should be left alone. We should be able to decide on our own what the law, as it relates to innkeepers, should be for the residents of the State of Nevada.

The legislation that is before this body is a bill that usurps and destabilizes well-established State law and principles as it relates to seller liability.

The legislature of the State of Nevada is meeting as we speak. They are talking about tort reform in Nevada as this debate is taking place.

I would much rather rely on what the State legislature does regarding tort reform for Nevada than what we decide back here should be the standard in Nevada.

The State of Nevada has carefully established rules as it relates to product liability. We have a strict liability standard for most products that are sold defectively. We are not unusual in that regard. There are 45 other States that have, through their courts or legislatures, adopted some form of strict liability as it relates to products.

Only a handful of States have chosen to remove product liability from this general rule. Should not that handful of States be left alone?

This bill would undo the law in at least two-thirds of the States. Contrary to nearly 200 years of State tort law, this bill would virtually immunize people who sold defective products.

Another troubling matter, Mr. President, is that this bill overreaches in its efforts to protect small businesses by placing a restrictive cap on punitive damages, or any ''entity or organization with fewer than 25 full-time employees.'' This overlybroad language extends the protections of this bill well beyond the so-called small businesses. This cap, for example, would completely take away the right that we have in most States to allow punitive damages against drunk drivers, against child molesters, perpetrators of hate crimes, and even by those who sell drugs to children.

I have, for more than a week, listened to this debate. Prior to coming here, I was a trial lawyer. I have tried scores of cases before juries—almost 100 jury trials. I believe that the jury system, Mr. President, is one of the things that we should be very proud of as a country.

We ought to reflect on the value of the Magna Carta. It was signed in a meadow of England, in a place called Runnymede. King John could not write his name. He had to put a mark for his name. The Magna Carta was the beginning of the English common law that we adopted when we became a country. One of the things that we brought over the water and now have and have had for over 200 years is a jury system, where wrongs that are perpetrated can be brought before a group of people and they can adjudge the wrong, if in fact, there were any.

My experience in the jury system, Mr. President, is that most of the time the juries arrive at the right decision. I would say that about 90 percent of the time, they arrive at the right decision. Not always for the right reason, but the right decision. I think it is something that other countries have looked on with awe and respect—our jury system.

Again, this bill would take away and undermine the jury system and places arbitrary caps on damages. The substitute arbitrarily caps punitive damages at two times other damages for all punitive damages cases. In order to have any deterrent impact, punitive damages should be based on conduct that is willful and wanton.

We have heard so much about the McDonald's case. But what was the McDonald's case? Let me explain, Mr. President, what the McDonald's case was. A grandmother took her grandchild to baseball practice. She wanted a cup of coffee. She drove to McDonald's. She got a cup of coffee. She put the cup of coffee between her legs, and as she removed the lid from the cup of coffee, it spilled. She had third-degree burns over her body. Her genitals were burned. She had to undergo numerous painful skin grafts.

A person might say, why should she be awarded for putting a cup of coffee between her legs? The fact of the matter is the reason the jury reacted in the way they did in this case is the fact that McDonald's had had 700 other burn cases where people had been burned with coffee. They had been warned and warned and warned that they served their coffee too hot —190 degrees is the temperature they served their coffee.

Mr. President, if a person buys a coffeemaker and plugs it in at home, and makes his or her own coffee, it comes out at about 135 degrees—something like that. McDonald's served their coffee at 180 to 190 degrees that if accidentally spilled could result in third-degree burns in a matter of 2 or 3 seconds.

The jury felt that McDonald's had been warned enough that they should not serve their coffee as hot as they did. Why did they serve it so hot? There were a lot of reasons, perhaps, but one reason they served coffee so hot is McDonald's felt they got more product by serving their coffee hot. That is, they got more juice of the beans, so to speak.

The jury award, the punitive damages award in this case, Mr. President, was the amount of coffee sold by McDonald's for two days. That is why they came up with the $2.3 million verdict. The jury felt that McDonald's should get the message that 700 burnings or warnings were enough.

The fact of the matter is that the court reduced this amount to $480,000 and the parties reached an out-of-court settlement for probably even less.

She had skin grafts, and as I indicated, the jury came to realize this was not an isolated incident. This was a wrong that had to be corrected, a willful wrong in the mind of the jury.

If a State, however, feels the McDonald's case sets such a bad precedent that they do not want to allow punitive damages, States have that right today. The State of Nevada, the State of Minnesota, the State of Mississippi, the State of Arizona—they can eliminate punitive damages if they want. But why should it not be done by the States? Why do we have to go and set a standard nationwide for how they handle their punitive damages?

The substitute amendment does not allow punitive damages, even if a defendant's conduct was reckless or wanton. Punitive damages can be assessed only if an injured citizen can prove the super-heightened standard of, ''conscious, flagrant indifference to safety,'' a standard I never came across in all the time I practiced law. I never heard of that. That is a new standard. It is one that is set up to eliminate punitive damages. Even though punitive damages is the amount that could be awarded, even if you could prove conscious, flagrant indifference to safety, it is cut down significantly; almost eliminated. This would take any thought about having punitive damages completely out of the law. Nationally, there would be no punitive damages.

Take companies like McDonald's or General Motors, and let us say we have a $250,000 punitive damage limit. Does that bother General Motors? Of course it does not.

What about the *Exxon Valdez* oil spill? Keep in mind the facts of that case. A man who had previously been told not to drink on the job is drunk, controlling the ship and causes all this damage to the environment. Should *Exxon Valdez* not be required to respond in punitive damages? I think it should.

Over the past few years we have seen an unfortunate entrance into the market of too many dangerous products that are marketed toward women: The Dalkon shield, the Copper-7 IUD, DES, silicon breast implants, are just a few of the alarming examples of dangerous products placed into the market that affect women. Why should there be some arbitrary standard now established that affects those cases? There should not be. It is wrong. To come up with a standard called ''conscious, flagrant indifference to safety'' is almost unconscionable. So a vote for the substitute is to vote to eliminate the existing legal incentives for companies to produce the safest possible products.

The substitute eliminates joint and several liability for the people who truly rely on noneconomic damages the most: women, children and the elderly. These victims will now be required to bear the risk caused by potentially bankrupt defendants. The joint and several liability standard came about as a result of there being a number of defendants, some of whom who could not respond. I ask the question rhetorically, is it fair to limit companies' liability to the most vulnerable when only joint and several liability will ensure full compensation?

This legislation creates a huge exemption for big business. The substitute excludes commercial loss from its scope. Is that not interesting? One of the reasons the products liability legislation was defeated last year is because it directed its attention to individuals suing each other, it directed its attention to the individual suing a company, but it did not focus on companies suing each other, and that is where most of the litigation takes place in products liability litigation. Again, this year the same problem exists because this provision, the commercial loss exclusion, essentially exempts big businesses from the restrictions in the bill that those same businesses seek to impose on consumers and workers injured by the products.

Take an example. If a product used on the factory floor blows up because of a defect, the injured worker's right to seek compensation from the third-party manufacturer of the product is limited. But the owner of the factory can sue to his heart's content, for as much lost profits as he deems appropriate; or if he had some property that was damaged there as a result of the explosion he can sue all he wants. So as a result of an injury to a human being, no recovery; but injury to property, you can sue just as you always did. So big business is protected.

There is a lack of uniformity. Proponents of this measure claim it will establish uniformity in product liability law. In reality, it creates prodefendant disuniformity. It is a one-way preemption at its worst. The amendment only preempts those State laws which favor consumers. How? It imposes an arbitrary cap on punitive damages in those States which allow it but it does not create punitive damages in those States which do not allow it. So in my earlier statement when I talked about the State of Washington having to now have an award given for punitive damages, some of those who are looking at this legislation say, ''That is absolutely wrong. In fact, if your standards are less than what is in the bill you can keep those.'' How unfair. It also establishes an arbitrary statute of repose for 20 years but allows States to impose shorter limitations if they so desire.

So we are rushing hastily to pass a piece of legislation that dramatically favors big business. It dramatically will change centuries of State-developed law. It is ironic that those who argue most vigorously for a stronger 10th amendment are the proponents of this amendment. This is the Siegfried and Roy illusion I talked about in the beginning of my statement. The State of Nevada knows best as to how their litigation should be handled. Unfortunately, the proponents of this legislation think they know what is best for Nevada.

We are saying to the American people that we no longer trust the judgments of State legislatures. We are saying we no longer trust people sitting as juries. And as I said earlier, the American system of justice and the jury system—while there are some decisions that I disagree with and we can all point to some of the criminal verdicts that have come about—the jury system is a uniquely American concept with its roots in the Magna Carta, grounded in democracy, and rooted in the ideal that ordinary Americans applying their inherent common sense can often best fashion a judgment or a decision that results in justice to the injured party.

Who knows the number of lives saved and the catastrophes prevented because of our laws relating to punitive damages? In the area of products liability, I pause to think what would happen if manufacturers, especially big business, did not have to worry about their products being safe.

So, let us not throw this standard out of the window and invite corporate wrongdoers to engage in a cost-benefit analysis of whether it makes sense to place defective products into the market. I think we would not be well served by adopting this legislation.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, let me first inquire if we are in a period of general debate on the product liability legislation?

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. Mr. President, I would like to extend my congratulations to the distinguished Senator from Washington, Senator GORTON, for his outstanding leadership both in the Commerce, Science, and Transportation Committee and here on the floor, in an effort to get a very responsible piece of legislation through, the Product Liability Fairness Act. He has worked very closely with the Senator from West Virginia, Senator ROCKEFELLER,

and they really have done yeomen's work in producing this legislation.

The bill that was reported from the Commerce, Science, and Transportation Committee has been expanded. A number of amendments have been adopted. And in my opinion, all of those amendments are improving amendments. We are talking about legal reform, not just product liability reform.

Having said that, it is obvious from votes late last week we are not going to be able to get through the broader bill, as much as I would like for that to happen. So there will be votes shortly, either later on this afternoon or, I assume, tomorrow morning—maybe this afternoon and tomorrow morning—on exactly what will be the final bill. I presume we will have a narrower bill than now exists before the Senate, one that is directed primarily at product liability but with some additional provisions, but not many, that have been approved overwhelmingly by the Senate.

I urge my colleagues in the Senate to vote to invoke cloture to stop the filibuster and allow the Senate to vote on this very, very important issue. It has been suggested that this would be a rush to judgment. Rush to judgment? We have been debating this issue—product liability—for 10 years in the Senate. This will be the third time we have voted to try to end the filibuster so we can even get to a vote since I have been in the Senate. This is my seventh year. We know the issue. We know the details. This is not a rush to judgment.

Plus, let it be noted once again that the Senate talks and the Senate stalls. The Senate is now in its third week on product liability and the effort to try to broaden it to have genuine legal reform. There have been legitimate negotiations going on led by Senator GORTON and Senator ROCKEFELLER to bring this to a conclusion. We should be ready to do that. The leaders have listened to the Senate. We have looked at the amendments and how close they were. What can we do to get an end to the filibuster so we can get to a vote?

This legislation will be narrow. It will be targeted primarily at product liability. It will not include medical malpractice reform even though we clearly need that and the Senate voted for it. But, if it is included, we probably cannot get the 60 votes that are necessary, once again, to end the filibuster.

This bill does not include criminal matters. The President suggested that it does. I have heard suggestions here on the floor of the Senate that it does. It does not apply to criminal matters like hate crimes. It is just not applicable here. That is a scare tactic.

Let me clarify this joint and several issues. It is amazing how things can be turned around in the debate here in the Senate. Joint and several—what does that mean? That means when you file a lawsuit, you file a lawsuit against everybody remotely connected or even in the area when you are wanting to sue and recover damages. But even though you were only remotely involved, like say maybe 5 or 10 percent of the damages attributable to you, if the other defendants are broke, you can be forced to pay the entire judgment. It is called deep pockets. If you happen to be in the area and you happen to be a successful company or an individual, you are the one who will get hit even though you were just involved to a very small degree. We are saying there ought to be some sensible limit there. You ought to pay for the damage you caused but not pay for everybody. It makes such good common sense.

Let me remind my colleagues here today that the American people overwhelmingly support the idea of legal reform—overwhelmingly. We have a few interest groups that do not want that to happen. But the people understand who pays. I mean it is easy to stand here on the floor of the Senate and say let us make you, EXXON, pay. Let us make General Motors pay. You know who pays? The consumer pays. It does not just come out of the sky. Somebody pays the bill.

When you have frivolous lawsuits against people acting in good faith, when you have doctors, ob-gyn's that are afraid to stay in their profession because they are liable to be sued paying thousands upon thousands of dollars for medical malpractice insurance, who loses? The patients lose. They pay more. Or you have doctors getting out of the business because they cannot afford to stay in it anymore.

However, we will have to reserve most of this legal reform for another day. Here we are only talking about product liability. We are trying to get some uniformity in an area that clearly involves interstate commerce. We are trying to get some commonsense answer in this area to stop forum shopping where a small company in my State that produces heavy equipment can be sued in all kinds of forums all over the country, and you shop around until you find the best forum. Then you sue them there. Some uniformity is all we are seeking here.

When scholars write the legislative history of Congress in the last quarter of the century, I think they will be puzzled by the debate the Senate has been engaged in now for 2 whole weeks and entering the third week. They will wonder why so much time, so much passion, so much pressure was expended on a bill that should have brought us together in unanimous agreement. It passed overwhelmingly out of the Commerce Committee. Yet when it gets to the floor the talk begins.

The scholars will note that the substance of this legislation enjoyed overwhelming approval of the public, that it was a moderate proposal with bipartisan sponsorship, and that a much more expansive measure had already passed the House of Representatives by a whopping margin of 265 to 161.

Why could the House get such a broad bill providing for legal reform passed by an overwhelming margin but the Senate cannot do it? Answer: Because it takes 60 votes to stop the debate in the Senate. Just keep talking, keep talking, keep talking and never take action. This time we should take action. I believe we will.

People will wonder in the future what could have been so controversial about the provisions in this bill. National uniformity in product liability law and putting American manufacturers on equal footing with foreign competitors should not be controversial. Encouraging alternative dispute resolution in place of lengthy and expensive court proceedings should not be controversial. That just simply says use a process to try to resolve a dispute instead of going through lengthy trials. It makes good common sense to me.

It should not be controversial to require that the person who creates harm must take responsibility for it. If someone who is drunk or under the influence of illegal drugs is more than 50 percent responsible for his own injury, he should not be able to extort money from others by blaming them for what happened. People who rent or lease cars and equipment should not be legally liable for the acts of those who rent those items from them. If you rent a car and go out and get drunk, cause an accident, injure people, why should the rental company be responsible for your misconduct?

It should not be controversial to stop the practice of holding defendants jointly liable for noneconomic damages usually referred to as ''pain and suffering.'' That has become a way for plaintiffs to get into the deep pockets of one defendant that I talked about earlier, even though some other defendant, with less resources, was at fault.

Jury awards of punitive damages in the millions of dollars have become commonplace. One example just cited was the McDonald's case. That is just one example. I would recommend to people that when they buy a hot cup of coffee, they not set it between their legs and try to drive an automobile. It seems to me that is contributory negligence.

It certainly should not be controversial to set a 20-year limit—a statute of repose—for a manufacturer's liability for a product used in the workplace. If a product is more than two decades old it should not be subject to a product liability suit unless it came with the written safety warranty longer than 20 years.

None of these provisions should be terribly divisive. Indeed to most of us here, as to most of the public, they are just common sense. I have referred to that several times. We are trying to curb excesses in the civil—civil—justice system, not the criminal justice system, although clearly after watching television the last few weeks we have a little work we need to do in the criminal justice area, too.

Yet somehow, H.R. 956, the vehicle for product liability reform, has become a battleground. We have allowed ourselves to get into heated debate. I have been guilty of that. I have said some things about the Trial Lawyers Association, the plaintiffs bar, that I should not have. I have had things attributed to me that I do not recall saying. It has been quoted that I said ''they cheat people all over America.'' That would be inappropriate. I reject that kind of language. Even having it attributed to me, I apologize for that. We do not need that kind of rhetoric. I should not contribute to it. None of us should contribute to it. What we should do instead is reason together. That is what is happening now. We are trying to find a solution so we can stop the debate, pass the legislation, get into conference with the House of Representatives, and do what is the right thing.

In some measures, you understand, with the intensity of the debate, that ideologically divisive—left, right—divisions come into play. If something is good in the South but not good in North, we get pretty hot about it because you are talking about our constituency and our regions of the country. But that is not what is happening here. This is something that involves economic interests of all the people. It involves trying to get some legitimate litigation reform. I think we will be able to do that today.

But what we have now has eroded—the public's respect for, and confidence in, the administration of civil justice.

The worst of it—and the most important reason why this bill be so needed—is that litigation involving product liability is harming consumers, taxpayers, businesses, and investors. It limits job creation, stifles creativity, thwarts medical and scientific advances, and lessens our country's international competitiveness.

And it benefits almost no one. Certainly not the hapless defendants, who often spend enormous amounts of money either defending themselves against frivolous lawsuits or settling out of court just to cut their losses. Nor does it help the plaintiffs all that much when a large share of their court winnings goes for attorney's fees, payments for expert witnesses, and court costs. One recent settlement against the Nation's major airlines gave consumers coupons for future flights, which they could redeem only a few dollars at a time. But the plaintiff's lawyers walked off with $16,012,500 in cold cash.

I do not mean to suggest that anyone who finds fault with some provision of H.R. 956 does so from an unworthy motive. Reform of product liability laws is a complicated matter, and there are legitimate questions as to how far one or another reform should be taken. I will candidly admit that this bill does not go as far as I would like it to. But I understand that some of its supporters do not wish to broaden its provisions. Despite our disagreement in that regard, we agree on the need for reform and are forthrightly working together toward common ground.

I am disappointed, however, that more Members of the Senate have not endorsed at least the principle of product liability reform, even if they might disagree with some provisions of H.R. 956. I wish they were trying to modify the bill to meet their objections, much as I might oppose their modifications, rather than trying to kill it. As it is, they have allowed themselves to become champions of the status quo, and that, I submit, is not an enviable position in the eyes of the American people.

And that is why the Senate has been spending all this time on what should have been a rather brief and unifying exercise in legal reform. It is why we still have the threat of filibuster hanging over our heads. It is why we spent so many hours over the last 2 weeks on amendments—one that was later tabled by a vote of 94 to 3.

We have dealt with several critical amendments, which have been accepted. One dealing with punitive damage awards against small businesses and charitable and volunteer organizations, many of which are being crippled by a justified fear of liability suits. Another would limit the use of joint and severable damage awards. A third will offer badly needed reforms in medical malpractice law. But what we have before us is a good start. It will bring about significant improvements in the way our courts operate, in the way our economy operates. It will make our civil justice system fairer, less costly, and more efficient. So I urge my colleagues here this afternoon to vote cloture. We still have some more amendments that can be offered. We could still discuss the final result. But it is time we vote and get this legislation moving forward.

Mr. President, I yield the floor at this time and, observing no other Senator who wishes to speak, 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. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HEFLIN. Mr. President, a substitute has been offered and I want to go into some of the aspects of the substitute, and I will later.

First, I think I stated in the beginning of the debate that I considered this to be an extremely unfair bill. While it was titled the ''Product Liability Fairness'' bill, there were numerous provisions that were one-sided and which attempted to take away rather basic rights of a claimant in a lawsuit, and I thought it was extremely unfair. Also this bill was unfair because of the fact that it exempted all commercial loss and made commercial loss come under the category of commercial or contract law, primarily the Uniform Commercial Code.

Commercial loss is a business loss, not a personal injury loss. Some of the most egregious punitive damage suits—practically all of the large ones—have been against business. Penzoil versus Texaco, $11 billion, is the one that stands out primarily in the minds of most people. But commercial loss would be in most all instances restricted to corporate America suing corporate America.

Manufacturers do not want to come under the provisions of this bill because they do not want to be put under the same laws as the people who receive personal injuries.

For example, under the statute of limitations on implied warranties in contract law, it is substantially longer. My State of Alabama has a contract statute of limitations of 6 years. Under the Uniform Commercial Code, under warranties, it is 4 years. Yet, under this bill, it would come to apply to personal injury which is 2 years.

There are several types of implied warranties under the Uniform Commercial Code. For example, there is an implied warranty that the product is suited for the purpose for which it is sold. However, under this bill implied warranties are not recognized.

Therefore, if a person remains silent, there is no implied warranty. The rules with respect to implied warranties have been developed over the years and have been recognized as being an essential element in sales that a product ought to be fit for the purposes for which it is sold.

There are other aspects of this that have emerged relating to its unfair provisions, and I will touch on some of these provisions at this time.

First, I want to address my remarks initially to the Snowe amendment. The Snowe amendment has been touted as eliminating the unfairness of the original cap on punitive damages in this product liability case. Under the original bill, it was set at being three times the economic loss, or $250,000.

There were those that said that noneconomic loss, such as scarring or disfigurement, the infertility or loss of childbearing ability of a woman, or other noneconomic factors such as loss of consortium, was discriminatory because of the fact that they would be limited to $250,000, whereas a person's economic loss could be up into the millions.

In a speech I made last week, I cited a 55-year-old CEO of a corporation who is making $5 million annually who has an anticipated work expectancy of 10 years. We would have a situation where his loss of earnings, his economic loss, would be $5 million a year times 10 years, or $50 million, and then multiply it by three. He would have a cap of $150 million, as opposed to the housewife

who has no economic loss, or the elderly who have no economic loss. Their cap would be $250,000—$150 million versus $250,000. That is quite a disparity in regard to caps, and I believe my point caused some Senators to reflect on the unfairness of the original punitive damage provision in the Gorton-Rockefeller substitute.

As a result, there have been some changes made. The Snowe amendment now has a formula with regard to punitive damages which provides for twice the amount of total economic loss and the noneconomic loss—or twice times compensatory damages.

Yet, there are still examples in which this would cause an even worse situation. In the case where death occurs instantaneously, there is no noneconomic—that is ''pain and suffering''—loss under the laws of most States. We would have a situation defined as meaning noneconomic loss means subjective nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation—all of this is in the definition of noneconomic loss that is in the substitute that we have now before the Senate.

Now, on that scenario where a person died as a result of injury, what would be the situation? That same 55-year-old CEO who was making $5 million a year, his economic loss would be $50 million on a work expectancy of 10 years times two under the Snowe amendment—or $100 million.

Well, that is less of a cap than the $150 million we have. But what do we have on the housewife? She also dies immediately. She did not suffer any pain and suffering, emotional distress, loss of society and companionship, and so forth, so she would really be in a situation where her noneconomic loss would be zero.

Then we revert back to what the situation was under the original bill. She had no economic loss because she did not work outside the home, and therefore her total economic loss and her total noneconomic loss would be zero. We double zero, and we still have zero.

Now, some might say, well, she would at least have an economic loss in funeral expenses. Well, there are some States—and I do not know whether this is the majority or not—that say that death is inevitable, like taxes. Therefore, we have a situation in which we are going to have to be buried, and that cannot be counted as an economic loss.

Let's say, for purposes of discussion and debate, that all of the States were to allow it. Instead of the death case with the elderly or the housewife, it would be an economic loss of maybe $5,000 for funeral expenses, and we double that under the Snowe amendment and we have $10,000.

So we still have the difference between the 55-year-old CEO who is killed, at $100 million; and we have, for the elderly or the housewife, maybe zero, and maybe $10,000 for funeral expenses.

That shows, to me, the disparity of the Snowe amendment, and a situation in which it would not operate fairly. At least, under the original bill, we would have had a cap of $250,000. Now the cap, under the death case that I recited, would either be zero for the elderly and zero for the housewife, or perhaps maybe $10,000, or possibly $15,000, at the most, in regard to burial expenses.

So this Snowe fix supposedly did come up under a situation in which death occurs, and as a result, if there were personal injuries, the personal injuries would have a different cap. But, therefore, it would be for the benefit of the wrongdoer who is going to be sued. A tortfeasor would much rather see the person dead than that he would be alive and incurring some pain and suffering and giving the jury some leeway in the determination of noneconomic loss, particularly if it is a person like a housewife, and elderly person, or a child or student, who has yet to begin making a living for herself.

Under the Snowe amendment, a high-income victim will continue to be able to receive a high punitive award, whereas a homemaker, retiree, low-income victim will be limited to a very low punitive damage award in regards to these instances. Punitive damages are designed to punish and deter egregious conduct. They are not necessarily designed to have caps. You have to deal with it on an individual basis.

As to the McDonald's hot coffee case, the situation was that the jury determined that punitive damages were in order to send a message to McDonald's, after 700 instances of burn cases. The jury in that situation decided on a punitive damage award of 2 days of the gross sales of coffee by the McDonald's Corp. which amounted to approximately $2.5 million, and then the judge reduced that down to $460,000. Later it was settled for an undisclosed sum that was protected by a secrecy order. There were third-degree burns in this case and McDonald's had repeated warnings that its coffee was being served way too hot. This bill takes away from the ability of juries to determine just what type of egregious conduct warrants an appropriate amount of punishment as to damages.

Other language that appears in the Dole-Coverdell substitute has been changed. There was put into the substitute an amendment by Senator DEWINE which appeared as a special rule. It says,

> The amount of punitive damages that may be awarded in any products liability action against an individual whose net worth does not exceed $500,000 or against an owner of an incorporated business or any partnership, corporation, association, unit of local government or organization that has fewer than 25 employees, shall not exceed $250,000.

Now it appears in the substitute that the Dewine exemption applies in all civil cases—not just product liability cases—against an individual whose net worth does not exceed $500,000 or a partnership, corporation, so on—but it has as its cap, two times the sum of the economic damages and the noneconomic damages—still Snowe—or $250,000, but then it has the language which says, ''which amount is lesser.''

So a suit against a small corporation, partnership or an individual where the net worth does not exceed $500,000—and of course a small business has fewer than 25 employees—that has as its caps Snowe, which is double the compensatory damages or $250,000, but which amount is lesser.

This exemption applies to all civil cases. I believe the President called a similar provision the drunk drivers' protection act.

It is still a drunk drivers' protection act against a limited number of people. It just says that if you are drinking while driving you better not be worth more than $500,000 or you must not be an owner of an unincorporated business or be involved in a partnership or corporation. But it still is a drunk drivers' protection act, as it would apply to the limits that are placed in the bill, because it applies to any civil action, not just product liability.

But let us also look at these caps and see how they apply. That 55-year-old CEO who is, we will say, killed, he has a situation in which he had a work expectancy of 10 years; with a $5 million annual salary he would have had a $50 million loss as his economic loss; multiply that times two and that would be $100 million. But under this, he would be limited to $250,000. Because that is the lesser of his $250,000 or two times his compensatory damages. So if he gets killed by a drunk driver, then the drunk driver is limited under the now substituted proposal to $250,000.

Let us take the housewife, the elderly person, or the child in some instances. You would think they would still be under the $250,000, but that amount is greater. It is not lesser. And the language here says ''is the lesser.'' So the housewife who has no economic loss, and no noneconomic loss, it is still zero. For the elderly person who has no economic loss, the cap is zero because it is the lesser. Because the compensatory damages that they would suffer, in a death case, would be less than the $250,000, therefore the lesser amount, zero, would apply.

This amendment also, as it is written now affects automobile accidents almost every type of conceivable accident, not just products liability incidents. It fails to take into account how much insurance an individual carries on his automobile or how much liability insurance he carries in his business. An individual may have $1 million or $5 million in liability insurance. But he still could have a net worth of less than $500,000. So he is protected under this special rule. He is protected by this small business exemption and the individual net worth figure, and his insurance goes home free. Certainly, if he

had $1 million worth of insurance, as a lot of people carry on their various businesses or automobiles—many individuals carry umbrella policies to try to protect them against that sort of thing—then that cap applies to him. But as to the housewife, the cap is zero or to the elderly the cap is zero.

So I just point these out to show how these caps would apply and what inequities would come about and would occur. These also would apply to any civil action. I wonder in regard to the Oklahoma City explosion if there were attempts to bring suits against those that are eventually determined to be responsible for that bombing.

So I just want to point out that there are many problems with the way this amendment is written. Certainly, if somebody carries insurance, the amount of the insurance ought to be counted in calculating whether or not a cap goes into effect. The idea is to protect the small business or the individual not worth more than $500,000. He might have a total net worth of $50,000 or $100,000 or $150,000 and carry $100,000 worth of insurance or carry $1 million worth of insurance. But these do not take into account his insurance that he carries on his car in the way it is written.

I mentioned one time in a previous speech about the situation of the homeowner policy. Homeowner policies have for years and years now carried comprehensive liability coverage. Comprehensive liability coverage is very comprehensive, and basically it is written in a manner in which it has to exclude those things that are not covered. But practically all homeowners carry some type of comprehensive liability insurance. Again, that insurance does not come into effect as the way this substitute—the change of the language—took place from the DeWine amendment. To me, that is another example of how this is being written for the advantage of insurance companies. Therefore, I think that ought to be given very careful consideration.

There are numerous aspects of this bill that are unfair as they apply to real life situations. I think it is very unfair to local government. There are some units of local government that are included under the DeWine amendment, if they have fewer than 25 full-time employees. But the way the bill is written, a claimant is defined to include a governmental entity. This affects most local governments, anywhere from a city that has about 25 employees. They usually define that as a city of anywhere from 10,000 and up with various types of departments: street department, fire department, police department and so on. I do not know the exact number. But it includes in the claimant.

So, therefore, a city or county, State government or Federal Government which has a claim arising out of this, or property damage, may have some claim in regard to subrogation rights under certain circumstances and would also include the Federal Government. Therefore, they come within the purview of this relative to all of the provisions that are in this substitute, including the misuse and alteration of a product by any person, not the claimant himself. He might not have anything to do with it. But they are entitled to a reduction in regard to the percentage of fault in regard to misuse or alteration.

With regard to the statute of repose, many, many products are bought by these governmental entities. Then the bill, or substitute, includes the Federal Government, the Army, the services. Most of our armed services utilize, helicopter, trucks, automobiles, Jeeps, and other vehicles all of which are built for the test of time. Many of them today are far in excess in age of over 20 years. For example, many of the types of helicopters that were used in the Vietnam war are still in use today. But the statute of repose in effect applies to them.

The purpose of this bill is obviously to save money for business, corporate America, and insurance companies. In this instance, who are they going to save money from in regard to their defective product—governmental entities?

There are provisions relating to several liability which concern me. You do not even have to be a party. You can prove it against a nondefendant in a suit. You prove several liability on that, and that includes coemployees, which in most States you cannot sue the employer. It has a provision that, if there is any fault to be allocated against the coemployee and the employer, then that is the last item that you are to bring up in the priority of how you present your case before a jury.

There are many other aspects of this that continue to be of concern, and I may mention some of these later as I go along. But there are numerous provisions in this bill that are written in such a manner which are directed toward taking away rights of the injured party and benefiting the wrongdoer.

The provision that says you cannot introduce gross negligence or any punitive damage elements in your main trial relative to compensation if you have demanded punitive damages and there is a call for a bifurcated or separated trial is further evidence of the bill's basic unfairness. To me that is a real serious situation. A claimant, for example, could not show if a person was guilty of drunkenness. That would be a punitive damage element, and you could not show that in the trial in chief.

Mr. President, for the time being, I am going to yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 709 TO AMENDMENT NO. 690

(Purpose: To provide for a uniform product liability law and to provide assurance of access to certain biomaterials)

Mr. GORTON. Mr. President, on my behalf and on behalf of the Senator from West Virginia [Mr. ROCKEFELLER], I have just filed with the clerk a second-degree amendment, and I ask that that second-degree amendment be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself and Mr. ROCKEFELLER, proposes an amendment numbered 709.

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

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

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

Mr. GORTON. Mr. President, I address these remarks to the President, and through him to my distinguished colleague from Alabama, who is opposed to this bill, and I hope to all Senators or to their staffs, because I hope and trust that this will be the final amendment with which we will deal on this bill, as we are to vote cloture on the Coverdell substitute at 4 o'clock. But as the proponents of product liability hope that Coverdell will be amended as per this proposal by Senator ROCKEFELLER and myself, I believe I should outline the key changes between the Coverdell proposal of last Friday and this one, because either before or after cloture it will be this amendment which becomes the final product liability vehicle for the Senate to vote on.

We can discuss a bit later all of the details of the proposal. But as the Senate will remember, last week what had started out to be a product liability bill was very considerably expanded, first by an amendment by Senator ABRAHAM from Michigan on relationships between lawyers and clients with respect to their fees and, second, by a proposal with respect to civil procedure 11 on frivolous lawsuits.

But more significantly, there was added an entirely new set of provisions on medical malpractice—a new medical malpractice code—to override, in many respects, the codes of the States. And, secondly, a broadening amendment by the majority leader, Senator DOLE, which extended the punitive damage rules contained in the product liability bill at that point to all civil litigation; and, of course, some change in the rules relating to punitive damages by the adoption of the Snowe amendment which limited punitive damages in product liability cases and then, by extension of the Dole amendment, to all

cases to an amount not to exceed twice the total of both noneconomic and economic damages.

When on two occasions last Thursday cloture was rejected on that broadened legal reform proposal, Senator COVERDELL, with the help of the majority leader, Senator DOLE, put the Coverdell substitute on the desk on Friday and filed a cloture motion on it. It returned the bill pretty much to the status of a product liability bill, with one exception that I will speak to in a moment. It restored for all practical purposes the original Rockefeller-Gorton bill with the Snowe and DeWine changes to punitive damages.

The Snowe amendment, as I have already said, said that punitive damages would be limited to an amount twice the amount of the total of all compensatory damages, economic, and noneconomic. The DeWine amendment limited the amount of punitive damages to $250,000 in the case of small businesses, those with fewer than 25 employees, and individual defendants of modest means with a net worth of less than $500,000.

There was no Abraham amendment in the Coverdell substitute. There was no change in rule 11 in the Coverdell substitute. There were also no alternative dispute resolution provisions at all, as they had been stricken before the cloture vote by a Kyl amendment.

However, the Coverdell substitute did extend the punitive damage rules related to small businesses only—that is to say, the DeWine amendment limiting punitive damages against small businesses or modest individuals to $250,000—to all litigation. It retained that part of the original Dole amendment.

After extensive negotiations Friday and over the weekend with my partner in this, Senator ROCKEFELLER, and his negotiations with as many as 15 members of the Democratic Party who want some product liability reform but who have been, to a greater or lesser extent, opposed to any theoretical limitations on the potential for punitive damages, we have arrived at this Rockefeller-Gorton second-degree amendment.

How does this change the Coverdell proposal? Mr. President, it changes it in about four ways.

First, we do return to a set of alternative dispute reasons or sections in the bill, but they are not the alternative dispute resolution provisions that were stricken by the Kyl amendment.

Senator KYL opposed those for two reasons: First, because they overrode the alternative dispute rules of the various States; and, second, because they provided sanctions against defendants but no comparable sanctions against plaintiffs when the proposed ADR solution was more favorable to the winning party.

The new Rockefeller-Gorton proposal on alternative dispute resolutions simply set up a set of rules under which States will conduct their own alternative dispute resolution proceedings. We do not override State rules on ADR, alternative dispute resolutions, except with respect to the time with which they must be commenced. So the only places in which these rules would be more or less mandatory are in that tiny handful of States that have no ADR provisions whatsoever.

The second and most important change in this bill relates to the formula for the maximum level of punitive damages.

The long and short of it is, Mr. President, that there is no longer any theoretical maximum limit on punitive damages, which I think will secure the support of many Senators of both parties who have wanted some kind of reform in the product liability field but have not wanted even the limitations that were contained in the Snowe amendment. So let me describe what they are now.

In cases that go before juries, the Snowe amendment will continue to be the case with the modifications proposed by Senator DEWINE; that is to say, the jury will have an upward limit in its award of punitive damages of twice the total of both economic and noneconomic damages.

Economic damages, Mr. President, are those for lost wages, for medical expenses and the like, the full out of pocket losses of the claimant. Noneconomic damages are those for pain and suffering which, almost by definition, are more subjective in nature.

You will total up the sum of noneconomic and economic damages and punitive damages can be awarded or, of course, not awarded, but cannot be awarded by the jury in an amount greater than twice the total of those economic and noneconomic damages, except that if that total is less than $250,000, the jury can award up to $250,000. So the maximum jury award will be $250,000 or twice the total of all compensatory damages, whichever is higher.

The big change, Mr. President, however, is the fact that the judge in the case may add to that award of punitive damages if the judge feels that it is inadequate because of the egregious nature of the tort which led to the punitive damages in the first place. The judge may add to that number and may do so in an unlimited fashion, there is no cap in this Rockefeller-Gorton amendment, except that if a judge does do so—in other words, what we consider a requirement by the seventh amendment—the defendant would have the right to a new trial to go back and start all over again.

There is one other major difference and that other major difference is a criticism which the Senator from Alabama made just a few moments ago against the Coverdell amendment; that is, there is no attempt in this bill to extend these punitive damage rules or limitations to cases other than product liability. In other words, that portion of the Dole amendment of last week which was left in the Coverdell substitute is now gone. This bill now applies to punitive damage cases only, as it did when it was reported by the Commerce Committee.

The profound difference between the form in which it finds itself here and the way in which it was reported from the Commerce Committee with debate beginning 2 weeks ago today, if my memory serves me correctly, the profound difference is in respect to punitive damages. You will remember that the original bill from the Commerce Committee had a cap of $250,000 or three times economic damages only, whichever was higher. The Snowe amendment effectively lifted that cap, to a certain degree. This removes the cap entirely, but only when a judge determines that that limitation would be unreasonable and finds the actions of the defendant sufficiently egregious to warrant it.

Excuse me, there is one other matter, the DeWine amendment, which does set a separate rule for small business defendants and for individual defendants whose assets do not exceed half a million dollars, designed to see a single case does not bankrupt.

So, Mr. President, I recognize that this is, oh, if not a complicated set of changes, still a complicated bill because the Senator from West Virginia and this Senator have collaborated on drafting this amendment because it reflects, I believe—and he can speak to it himself when he gets to the floor—because it reflects the views of the more than a dozen additional members of the Democratic Party who have been working with Senator ROCKEFELLER, and because it represents the considered views of the majority leader at this point. I hope that we will be permitted to adopt this second-degree amendment before 4 o'clock, so that it is absolutely clear exactly what the cloture vote is on.

I can say, Mr. President, that if that does not happen, if we have not adopted the second-degree amendment by 4 o'clock, I can assure Members that this amendment will be adopted postcloture before we reach a vote on final passage on the bill. I speak in this case for myself, for Senator ROCKEFELLER and for the majority leader; in other words, I believe that among us, we can guarantee enough votes so that Members can be assured that what they are bringing to a close is a debate on this modified proposal, a proposal which does not have the caps on punitive damages which caused, I think, the great bulk of the debate on this issue during the course of the last 2 weeks.

I can say rather bluntly, Mr. President, that I do not regard this as a totally satisfactory response. I believe that the desire for predictability and for economic progress and opportunity in this country calls for limitations on punitive damages which this proposal lacks.

So I have given up ideas which I think are quite important in connection with this aspect of legal reform, but I have done so for the greater good for accomplishing something, for doing something to bring a greater degree of balance and fairness into this whole field than exists at the present time.

I expect during the course of the next hour that my friend, the Senator from West Virginia, will be here. I believe that the majority leader will ratify what I have said. I see the Senator from Alabama on his feet, and I will let him either speak to it——

Mr. HEFLIN. I just wanted to ask if the Senator will yield and respond to a couple questions.

Mr. GORTON. I will be delighted to do so.

Mr. HEFLIN. Let me ask the Senator this. Is the Shelby amendment included?

Mr. GORTON. The single printed copy of the amendment that I had was submitted to the desk about 15 minutes ago, and it is in the process of being copied. I hope within the next 5 minutes we will have copies for every Member.

Mr. HEFLIN. To answer my question, is the Shelby amendment included or not?

Mr. GORTON. The Shelby amendment is not included in it, I say to the Senator from Alabama. On consideration and on speaking to a wide number of other Members, we believe that the peculiar rules in Alabama with respect to wrongful death decisions, that we were going to do one of two things: Either create a hole in this bill big enough to drive a truck through or, alternatively, encourage the Alabama Legislature to change its law to conform with those of other States.

Mr. HEFLIN. Let me ask the Senator this. In regard to the DeWine amendment, is it still the lesser of $250,000 or two times compensatory plus noncompensatory? Is it still the lesser?

Mr. GORTON. No, it is the greater of.

Mr. HEFLIN. What I have written out to me is the lesser of it. This was handed out as some sort of brief statement.

Mr. GORTON. That is a very good question, I say to the Senator from Alabama. It is my intention to have it the greater. I know this says the lesser. I will check and see and we will change it.

Mr. HEFLIN. I think the distinguished Senator from Washington wishes to speak. I yield the floor.

Mrs. MURRAY addressed the Chair.

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

Mr. GORTON. Excuse me, Mr. President, the Senator from Washington has the floor.

Mr. President, can I have the attention of the Senator from Alabama?

Mr. HEFLIN. Yes.

Mr. GORTON. I need to say to the Senator from Alabama, I believe I misspoke myself because there are two separate uses of the $250,000 figure.

Mrs. BOXER. Parliamentary inquiry. What is the status of the floor debate at this time?

The PRESIDING OFFICER. The senior Senator from Washington has the floor. The Gorton substitute, amendment No. 709, a second-degree amendment is the pending business. He yielded the floor to the Senator from Alabama for a question and he is responding to that.

Mr. GORTON. There are two separate uses of the figure $250,000 in this Gorton-Rockefeller second-degree amendment. The first is that in most cases, in normal cases, the $250,000—rather the Snowe amendment says that the maximum punitive damage award is twice the total of economic and noneconomic damages. This adds to that, or $250,000, whichever is greater.

Let us say in a case the total economic and noneconomic damages were $15,000. Twice that is $30,000. Under this amendment, nonetheless, the jury could award $250,000 as being greater than $30,000.

In the case of the small business, however, the business with fewer than 25 employees or the individual defendant with less than $500,000 in assets, $250,000 or twice economic and noneconomic damages, whichever is the lesser is the ceiling.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington

Mr. GORTON. I yield the floor.

Mrs. MURRAY. Mr. President, I rise today in opposition to S. 565. The bill before the Senate claims to promote fairness, but I believe it is actually far from fair to consumers in my home State of Washington and throughout this Nation.

I will leave it to the lawyers here to discuss the legal intricacies of the bill. However, I want to raise some very serious, commonsense problems I have with this legislation.

First, I am deeply concerned about the bill's potential to disproportionately harm women.

I am amazed that the bill before us treats a corporate executive's loss of salary as more important and deserving of compensation than the loss of such priceless assets as the ability to bear children, the senses of sight and touch, the love of a parent or husband, and the ability to move freely—unhindered by disability, disfigurement, or lifelong pain.

Certainly, this body must believe that raising a family, and having children should not be seen as unimportant in our legal system.

S. 565 would eliminate joint and several liability for noneconomic losses. And, by making noneconomic damages more difficult to recover, it would impair a woman's ability to recover her full damage award.

It is unfair to require only the victims of noneconomic losses—such as a woman who has lost the ability to bear children, or a child disabled in his youth—to bear the burden of pulling all the defendants who caused them harm into court.

Joint and several liability allows injured victims to receive full compensation, and leaves it to the guilty defendants to divide the damages appropriately among themselves. It seems to me much fairer to place this burden with the guilty parties, than with those who are injured.

The singling out of noneconomic losses for adverse treatment will prevent women from being fully and fairly compensated. This is especially objectionable because women have been the victims of many of our Nation's most severe drug and medical device disasters—DES, Dalkon shield and Copper-7 IUD's, and silicon breast implants are just three examples.

I have met with many women from my home State of Washington whose lives have been devastated by these products. Their stories are tragic. Their lives have been changed dramatically. They deserve a system of laws that treats them fairly.

Mr. President, mandating a nationwide cap on punitive damages also seems ill-conceived in light of the number of dangerous products that have been marketed primarily to women in this country.

S. 565 establishes a cap on punitive damages of three times a person's economic injury or $250,000, whichever is greater.

We should not forget in our rush to make changes in this Congress that the purpose of punitive damages is to deter bad behavior by making it impossible to calculate the risk of engaging in such behavior. Under S. 565's cap, I fear wrongdoers will find it more cost effective to continue marketing their dangerous products rather than removing them from the marketplace.

Even Senator SNOWE's amendment to change the cap on punitive damages to two times compensatory damages does not remedy the unfairness of this cap. Although, Senator SNOWE's amendment includes noneconomic damages within the formula for punitive damages, it does not acknowledge the important role of punitive damages in deterring and punishing outrageous misconduct.

Last year, Senator KOHL introduced an amendment to the product liability bill that, unfortunately, was not adopted. He sought to incorporate more fairness in this legislation by restricting the ability of Federal courts to sanction secrecy in cases affecting public health and safety. I was proud to join him as a cosponsor of his antisecrecy amendment last year, and look forward to joining him again when he raises the issue in this Congress.

The settlement of the Stern case in 1985 by Dow Corning is a great example of why such a change is necessary. As a result of a secret settlement agreement, Dow Corning was able to hide its decade-old knowledge of the serious health problems its silicon breast implants could cause for 6 additional years.

The damaging information did not become public until the FDA launched a breast cancer implant investigation in 1992. In the meantime, nearly 10,000 women received breast implants every month, and countless women were harmed.

Mr. President, this bill would not only disproportionately harm women, it would also deprive injured consumers in my home State of Washington of rights they currently have.

This is significant because Washington has one of the most conservative tort law schemes in the Nation. This bill would reduce the statute of limitations in my home State of Washington from 3 years to 2 years. Injured consumers would have less time in which to file lawsuits when they are harmed by dangerous products. The bill also would reduce the number of situations in which product sellers can be held liable in Washington State. And the bill would abolish joint and several liability for noneconomic damages currently available in Washington when the injured person has not contributed to her injury.

As the Seattle Times editorialized just last week:

Recent polls show that the great majority of Americans oppose restricting the right of individuals to hold manufacturers and medical workers accountable for their injurious act.

The National Conference of State Legislatures opposes having Congress federalize an area of law that has been the exclusive domain of state lawmakers for 200 years. And state judges are coming out against federal statutes that would tamper with century-old jurisprudence developed in state courts.

The rush to impose federal rules on tort claims runs counter to the Republican philosophy of giving more power to the states. Surely, this is one area where state judges and legislators are better suited to determine what's needed in their communities.

The Washington Legislature, for example, passed a comprehensive tort-reform law in 1986. Many other states have done so in the past decade, Yet, voters in some places, such as Arizona and Michigan, have turned down tort reform initiatives. Why should Congress now force those voters to live with legal changes they rejected at the polls. * * *

I ask unanimous consent to have the editorial printed in the RECORD.

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

[From the Seattle Times, Apr. 30, 1995]

FEDERAL TORT REFORM USURPS STATES RIGHTS

The only parties pushing for tort reform seems to be big businesses, doctors intent on curbing medical malpractice lawsuits, and lawmakers who receive financial contributions from those lobbies.

Recent polls show that the great majority of Americans oppose restricting the right of individuals to hold manufacturers and medical workers accountable for their injurious acts.

The National Conference of State Legislatures oppose having Congress federalize an area of law that has been the exclusive domain of state lawmakers for 200 years. And state judges are coming out against federal statutes that would tamper with century-old jurisprudence developed in state courts.

The rush to impose federal rules on tort claims runs counter to the Republican philosophy of giving more power to the states. Surely, this is one area where state judges and legislators are better suited to determine what's needed in their communities.

The Washington Legislature, for example, passed a comprehensive tort-reform law in 1986. Many other states have done so in the past decade. Yet, voters in some places, such as Arizona and Michigan, have turned down tort reform initiatives. Why should Congress now force those voters to live with legal changes they rejected at the polls?

The Senate product-liability bill, sponsored by Sen. Slade Gorton, though more limited than the House legislation, is still an unnecessary federal intrusion into state law.

The Senate bill does not include the House's onerous ''loser pays'' rule that would prevent individuals and small businesses from filing legitimate lawsuits for fear of having to pay legal fees for the opposing side. But like the House bill, it would cap punitive damages in dangerous-product cases to $250,000 or three times the economic loss, whichever is greater.

The change might make sense if it created a uniform rule across all 50 states. But it won't. Washington law does not allow punitive damage awards at all, so the proposed federal standard won't apply here.

Other provisions of the Senate bill, however, will affect Washington residents. One provision would make it harder for people injured by defective products to collect for ''pain and suffering.'' The bill places limits on lawsuits by individuals, yet places no such limits on businesses.

Tort reform will not unclog the court systems. Though businesses routinely complain about the litigation explosion, tort claims account for only 9 percent of all civil suits, and product-liability cases make up only 4 percent of tort claims. The real problem is with companies suing each other—a phenomenon completely unaddressed by the proposed legislation.

But this isn't about clearing up court dockets or improving the way judges and juries handle tort claims. It is about reducing the financial exposure of manufacturers even when there are serious proven injuries. If states believe protection is needed for businesses, they are free to enact tort reform without congressional interference.

Mrs. MURRAY. Mr. President, I have serious concerns about S. 565 and cannot support passage of this legislation. I urge my colleagues to think long and hard about consumer health and safety, their individual State's autonomy in determining its own tort laws, as well as the potential impact of this bill on women.

I believe this bill tilts the scales of justice far too dramatically in favor of corporate profits. It is our job to do all we can to assure the families we represent that the products they use are safe, and that they will have recourse if they are harmed.

Mr. President, this bill hurts the little guy. Is it not time we all stepped back, and remembered the adage—there but for the grace of God go I.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Mr. President, I want to associate myself with my colleague from Washington, Senator MURRAY, because I think that she, as she usually does, puts her finger on real people.

Who are the real people that are going to be impacted by this change in this law that is before us? I hope that we do not vote for cloture. The bill that would be before us, if cloture is voted, is a bill that I think is very, very harmful to the American people. It is bad for consumers; it is bad for a system that has produced the safest products in the world.

With all our problems, we still have the safest products because we have a legal system out there that acts as a deterrent to those sitting around in the boardrooms deciding if they can write off a certain number of injuries and still make a profit.

I said the last time I debated this that this so-called reform is not so much about what will go on in the courtroom as what goes on in the boardroom, because it is in the boardroom—and we see it through discovery in other products cases—where the dollars and cents take hold. We have heard about automobile manufacturers who knowingly did not spend enough time on safety and said, ''we can afford to have so many explosions and we will still make money.'' We want to make sure that that kind of callous attitude does not increase in America today. We want the safest products.

My friend from Washington, Senator MURRAY—I have to be clear because we have the two Senators from Washington on different sides of this—was very clear on who could be hurt from this so-called reform. Again, I want to make the point here that it is the Republican Congress that keeps on saying, ''We want the people of the States to handle everything. They are better at it.'' Yet, when it comes to product liability, for whatever reason, they want big brother and big sister and the U.S. Senate to dictate to every judge and jury in this country as to what damages ought to be. I find it almost amusing, if it were not such a serious matter.

When it is convenient, you are for the local people, and when it is not, do not let philosophy get in the way. I think Senator THOMPSON from Tennessee made that point very clearly, as a Republican Senator who does not like this bill, asking if this goes against the grain of what he said Republicans are trying to do. I applaud him for that directness.

Now, we know that there are going to be some changes to the bill as it is before us in order to get enough votes to move forward. I was very pleased to see that not even a majority of this Senate would stand up for that Dole amendment which would put a punitive damages cap on all civil cases. It was so far-reaching and so hurtful that Senator DOLE could not even get 50, 51 votes. I think he got 47. That is very far from shutting off debate.

I have to say that I believe the substitute bill will have some terrible consequences. Yes, it stripped out the

other areas of law, and they are just sticking to products.

I think there will be three consequences. By the way, I am not suggesting that the people who support this bill want these consequences. But I believe these are the consequences of the bill.

First, it will make our products less safe—less safe—for consumers.

Second, the formula for punitive damages is blatantly unfair. It favors the wealthiest. Let me repeat that: The formula for punitive damages is blatantly unfair and favors the wealthy. I will show a particular case where we have a wealthy corporate executive suffer the same injury from the same product as a homemaker and wait until we see the difference in the award that they get. It will make your hair stand on end, it is so unfair.

Third, there is another issue that has not yet been raised that deals with the biomaterials section, which I believe will unduly restrict liability for suppliers of component parts. In other words, if a person gets hurt by a product that has a number of parts, what this would do is put some of the manufacturers of those parts off limits. They would have no liability. It sets up a real problem, which I will go into.

Moving to consumer safety, one study done on tort law and its effect on improved safety, reported that the State system of product liability saves lives. The study estimates that 6,000 to 7,000 accidental deaths are prevented and as many as 3 million fewer injuries occur every year because of State product liability laws. We are talking here about changing laws that studies have shown saves lives.

Why do we want to do that? Some 6,000 to 7,000 deaths are prevented every year. Three million fewer injuries. Why do we want to change a system that helps this country? I do not believe the proponents of this legislation want to see more deaths and injuries, but I believe that is an unintended consequence of this bill. The best products in the world, and we are messing with it over here, and I think it is wrong.

Now, I want to talk about fairness. The Dole bill, as it is before the Senate, and I know that Senator GORTON plans to amend it so I will address both, would do the following, and I will prove it by giving a case and walking through a case.

There is a CEO who earns $400,000 a year. His auto engine explodes and he is unable to work for a year. Then, there is a 45-year-old female homemaker. She earns no wages. Same thing happens to her. Her auto engine explodes and she is unable to work for a year. The automaker is found 100 percent liable by the jury.

For the CEO, the jury awards economic damages of $425,000—the $400,000 he makes plus $25,000 in medical bills; pain and suffering damages of $25,000; he gets a compensatory damage award of $450,000. When we add that in with the punitive damages, which is two times compensatory damages, he gets $1.35 million.

Identical injury, different results. Now we will look at the homemaker, 45 years old—same age as the CEO. She earns no wages. Her auto engine explodes and she cannot work for a year. She is not working anyway. She has no wages. The automaker is found 100 percent liable. She gets economic damages of $25,000. She has no lost wages. She has $25,000 in medical bills, pain and suffering of $25,000. Her total compensatory damage award is $50,000.

Here is what happens to her: She gets compensatory damages of $50,000; punitive damages of $100,000, for a total award of $150,000. Same injury, different result.

This is the bill that is before the Senate. Senator GORTON wants to make it better. I am glad he does. He is putting back the $250,000, so she could get $250,000 in punitive damages if his amendment holds.

Now, giving them the benefit of the doubt, that they change it to $250,000, it is $1.35 million versus $300,000—same injury, different result. This is what we are voting on.

I hate to say it, but it hurts women the most. Women still earn only 71 cents for every $1 earned by a man. And women and minorities make up only 5 percent of top management jobs. The consequences of that disparity here will play out.

Who will get hurt? Middle-income people, women, the elderly, children. Who gets the highest award? A high-paid executive. Oh good. Just what we needed. Robin Hood in reverse. A court system that pays this man $1.35 million and pays this woman $300,000 or $150,000, depending on what we wind up with.

I have to say that anyone who votes for this is voting for something that is blatantly unfair, blatantly unfair. We in the almighty Senate are putting our imprimatur on this kind of a plan.

Not this Senator. I hope we have enough Senators who stand up and be counted for the little guy, as my colleague Senator MURRAY says, the little guy, the little gal. They do not have pinstripe suiters around here. They do not get on the plane and come and knock on our door. But the big guys can. And that is what this bill is for. Unfair, blatantly unfair.

The bottom line is that juries, who see these cases firsthand, can make these decisions. That is the bottom line.

Now, I want to talk about medical devices. This is something that hits home again to a large number, particularly of women, although I might say men who have pacemakers or other kinds of devices implanted should be very concerned about the biomaterials section in this bill. Senator HEFLIN and I have discussed this, and we both agree that this title of the bill has not gotten enough attention.

As biomaterial suppliers, component parts manufacturers would be shielded from liability under this bill.

I am concerned that these provisions go too far. We know about silicone gel implants. Would the people who make that silicone be immunized under the bill? Will they be protected from lawsuits?

We know Dow Chemical set up a corporation just to make breast implants, and they called it Dow Corning. They tried to protect Dow Chemical from liability that way even though Dow Chemical made the chlorinated organic compounds, the solvents and the catalyst that went into these implants.

The product of silicone breast implants, we know, is the subject of ongoing litigation, but will this title in the bill that is still in the bill mean that Dow Chemical could be dismissed from the case? What would we be telling the women, infants, and children whose lives have been devastated by these leaking silicone implants? What would we be telling them now that they are finally ending their battle with the chemical giants? Are they going to be told, ''Sorry, Congress just gave extraordinary protection to Dow, and you are left with no way to be made whole?'' I hope we will not vote cloture on this bill.

We are not sure if Dow would be shielded, but it is clear that manufacturers will try for this absolute defense.

Mind you, in that section they will be shielded from liability for component parts. And will these provisions encourage device manufacturers to set up their own separate entities to manufacture all the component parts and supply all the raw materials? Would these provisions protect these shell corporations from reckless conduct or even deliberate harm?

I know small businesses are concerned about this, if they supply a small part. I am not talking about that situation. I am talking about a situation that could occur in this bill with this title where a corporation that makes, say, the silicone breast implant, sets up another corporation at an arm's distance, legally, and that second corporation supplies all of the component parts. If the product is unsafe and the company that makes the product goes out of business, no one can go after the company that makes component parts because—guess why—they are shielded under this bill.

Let us not mess with the product liability laws in this land.

In the beginning we heard a lot of talk: Oh, there is a crisis, so many cases. There have been about 350 cases in 25 years where there have been punitive damage awards. I think we have proven that on this floor over and over again. The leadership on this, from my side of the aisle, has been magnificent. Senator HOLLINGS and Senator HEFLIN have been on their feet, hour after hour after hour, peeling away the talk and

looking at the facts of what this bill will do.

I think the American people are starting to get scared, because just because somebody says ''legal reform'' does not mean necessarily that is what it is. This is not reform, this is basically the Federal Government taking over and tying the hands of judges and juries, tying their hands, so if someone is disfigured or has brain damage or cannot have a child and suffers mightily and his or her family suffers mightily, that judge and that jury cannot decide the dollar number to put on that case.

We know there are enough checks and balances in the system today. We do not need to take over this area of the law. I hope we will stand strong today, again, against cloture. Just keep in mind in this accident: Identical injuries, different results—a homemaker getting a maximum of $150,000; with the Gorton amendment getting a maximum of $300,000; and the same identical injury, a CEO making $400,000 comes away with $1.35 million.

To me that is a denial of equal protection under the law. But, yet, that is the kind of law we are looking at.

Let us beat back this other attempt at cloture. Let us protect the American people from this bill. It is not necessary and it will be very hurtful.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, this bill ought to be determined kill them, not injure them. Certainly in regard to the DeWine small business amendment, where it is the lesser of $250,000 or two times noneconomic and economic damages, you can have instances in death cases where the limit would be zero because there are no economic damages and because death occurs immediately, without pain and suffering, or with a minimum amount of time in which one goes through that.

But the whole issue comes down to the role of the Senate. To me, the role of the Senate in regards to this is extremely important. Some of my colleagues, I am afraid, do not realize there will be a conference and the House of Representatives bill, which was passed, which has a 15-year statute of repose, which does not even have the Snowe amendment, which I consider not to be—an improvement—does not have it in it. And when you go to conference what is going to happen? I do not see the Speaker of the House of Representatives is going to be outdone by my good friend, Senator ROCKEFELLER. I think he will come out with a House version of the bill.

So, regardless of what substitute to a substitute might be offered here, if cloture were to be agreed to then what do you do? You go to conference and what do you come out with? You come out with the Gingrich bill.

The role of the Senate is to be a deliberative body. We are not a body that votes aye and nay, and the majority rules in the event a person desires to take advantage of the rules. You have the cloture situation. So what is really at stake here is an issue in regards to the role of the Senate and the rules of the Senate.

Do not be under any illusion to the effect that what you might adopt as a substitute to a substitute is going to be the final bill that goes to the President. It goes to conference. I think we ought to realize very clearly what the situation will be.

There are just so many bugs in this. One of the lawyers on Senator HOLLINGS staff mentioned to me you can organize subsidiary corporations or you can keep down the major corporations to fewer than 25 employees. There are so many maneuvers and various activities that can occur relative to that, that opens the market wide open pertaining to this.

So I have already spoken. Senator HOLLINGS is here, and others that will probably want to speak. I am not going to speak long on this, but this is basically saying that life in the United States, if a wrongdoer kills you, it is worth no more than $250,000, particularly in the event that you fall under the small business protection. I say this is flawed with great unfairness throughout. I have outlined it before.

But the main issue to be considered in this cloture vote that is upcoming is the role of the Senate. Do not forget there is going to be a conference. Do not forget who is going to control the conference. I hope my colleagues bear that in mind as they consider their cloture vote.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the Senator from Alabama is right on target. I remember my children years ago used to listen to a little Saturday morning radio show, ''Big John and Sparky,'' and they had little squeaky Sparky with the voice:

All the way through your life,
Make this your goal,
Keep your eye on the doughnut,
And not on the hole.

Keeping our eyes on the doughnut and trying to avoid falling into holes that these folks have on course, all we need do is go to the contract, the contract and what is really intended.

The theme of the contract is that Government is not the solution; Government is the problem. The Government is the enemy. Abolish the Department of Education; abolish the Department of Commerce; abolish the Department of Housing and Urban Development; abolish the Department of Energy; get rid of public TV; get rid of private TV; abolish the Federal Communications Commission; abolish the Endowment for the Arts on the one hand, the Environmental Protection Agency on the other hand. And then, as concerns fundamental rights, we come to trial by jury. This is none other than an assault on the seventh amendment, the fundamental right given under our Government for a jury of your peers.

I could quote Patrick Henry, James Madison, Thomas Jefferson. We could go right on down the line, up to Chief Justice Rehnquist —and we will have time to do that—very, very interesting observations, right up to date. But you can see it in that contract, the English rule.

Now, you have to watch them closely to get the eye on the doughnut. It is not in there—tort reform—but it is over in H.R. 988, a separate bill. In that separate bill, yes, they have the English rule on the one hand, and interestingly, Mr. President, they sneaked in what the Senator from West Virginia said. Now we do not have that in our bill this year; that is, the settlement process whereby if you are offered a settlement and decline, and you get a verdict of less than that settlement, you have to pay the attorney's fees on the other side. That is the English rule of intimidation, and they have it in this separate bill. You can bet your boots they will get it in the conference.

Yes, they constantly are reminding us that we lost. You are right. Tom Foley is not over there; NEWT GINGRICH is over there. I have seen him whip these young Congressmen from my own State into line. It was said conscientiously we did not have the money for a tax cut. We did not have it; no. They are opposed to a tax cut because we just did not have it. What we needed to do was pay the bill—on and on. But we are now in the bottom nine game. You either come out for practice or you do not play on the team.

Speaker GINGRICH is a hard taskmaster. You can bet your boots when this bill or any bill gets there, it needs little fixes at the end before cloture votes. Essentially, they are that; just momentary fixes to get just a title or anything that would relate to it over to the House side, for they know what they can get by an overwhelming Gingrich vote over there, and bring it back where the poor majority leader has to mimic because he is all wound up in a Presidential race.

I know the distinguished Senator from Kansas does not want to do away with punitive damages in all civil cases. But anything you can do, I can do better. So you do one. So I up the ante and go to all civil cases. We will find out who is for who, and who ought to be the Republican nominee, and we will just out-Republican each other. And you have all kinds of mischief afoot if you do not keep your eye on the doughnut and watch it very, very closely.

They never would apply this to the manufacturers. I just allude here to one case because they keep talking about punitive damages. It is the case of TXO Production Corp. verses Reliance Resources, decided just 2 years ago by whom? The U.S. Supreme Court, on punitive damages. What were the actual damages? They were $19,000. What were the punitive damages? They

were $10 million. You get all of this anecdotal nonsense. They come out in individual injury cases like it is so outrageous, that the poor lady who was burned with the McDonald's coffee was just outrageous, not this kind of percentage. They go to 1,000 percent. This is way more than that $19,000 actual, $10 million punitive, the most recent case on punitive damages before the U.S. Supreme Court in a civil action.

So there it is. They do not believe in it because they will not apply that to themselves. They have the unmitigated gall to come around saying they represent the consumers, but they will not let it apply to the manufacturers. Come on. Come on. Do not give me that this bill is for consumers, and the consumer and the injured party are not getting enough money. Do not come with respect to the trial lawyers that bought the crowd. Come on. Everybody is in the contribution business. I would like to get some more from the trial lawyers. I would like to get more from the chamber of commerce. You do not think that the chamber of commerce, the National Association of Manufacturers, the Conference Board, the Business Round Table, and the National Federation of Independent Businesses, yes, they have PAC's. And they give away more money. But you cannot find it quoted in the newspaper.

They not only give more in contributions but they have a better currency. They have organized PAC's and organized focus. I see them in my elections. They come to you, and they say, ''How about it, now? We want you to help us on this bill.'' I am getting the letters. I am getting the calls now. The people in a position of objecting to this heinous measure here, the Consumer Federation of America, the leading one, they do not have a PAC. They do not give you a nickel.

Do you think you get calls at election time? The NFIB and the small business people out there are calling, the chamber of commerce is calling, big boys from the Business Round Table and the National Association of Manufacturers in my State are calling. The Consumer Federation of America does not have a PAC. Public Citizen does not have a PAC. The Association of State Legislatures does not have a PAC. The Association of State Supreme Court Justices does not have a PAC. The Attorneys General of the United States does not have a PAC. The American Bar Association does not have a PAC. Let us clear the air here and find out who is who, and who is supporting who.

This insulting reference that this bill ought to just whip right on through, they do not believe in it themselves, or their own manufacturers that they represent. They do not believe it by way of contractors, because the contractors are sending everything back to the people. This bill is to take it away, take it away from the people; bring it to the Washington bureaucrats on the one hand, and take away the rights of trial by jury on the other. You do not just outright abolish the seventh amendment. You nibble at it. You nibble at it. You just erode it like a rat just gnawing at it gradually. Yes, get rid of punitive damages. Get rid of joint and several liability. Limit the evidence that goes in. Get a bifurcated—a divided—proof of actual and proof of punitive. Go right on down the list. Give them the English rule.

Well, that is not 170 years ago. I had this quote from none other than the British National Council for Civil Liberties, what they had to say about the systematic erosion of the English jury system between 1967 and 1978:

> The jury system has been badly undermined in recent years. The prosecution in criminal cases, otherwise than civil cases, need no longer convince 12 jurors. They can convict on the views of only 10.

They state that to come in now, to allow a check on the jurors' backgrounds, while the defense is not even allowed to know his occupation, the prosecution can secretly bet your all for their political loyalty, yet the defense is not even allowed to ask jurors questions in open court. The principle of randomness has been used to cut down defense challenges but leave prosecution challenges unlimited. A large percentage of the criminal work has been removed from the jury to the magistrates court. And on the civil side, we find that less than 2 percent of the civil cases are tried before a jury.

I had a lawyer friend that went to the American Bar Association seminars and interviewed the prospective jurors at random. He kept going through, trying to find any that would serve. He could not find anybody in London. He went on up to Scotland. They just did not serve on juries. You have to be a member of the elite. So do not come and give me the English rule.

I know about the unstudied mind of the ideas of the Magna Carta, King John at Runnymede. I remember, I say to the Senator, when we went over on one of these tourist trips to London. They got on the bus one afternoon and stopped at Runnymede, and my friend is as talkative as I am. He said, ''Now, what happened here?'' The bus driver called back and said, ''King John, the signing of the Magna Carta.'' And he said, ''Well, when was that?'' The driver shouted back, ''1215.'' He looked at his watch. He said, ''Florence, damn it, you are 2 hours late again. We are behind time.''

That is about how much this crowd knows about Runnymede and the Magna Carta. They do not know about the English system. They do not know it is totally eroded. The fundamental right of trial by jury here is being assaulted.

Let us look at that so-called English rule that they have on another bill that they hope to put in in conference. I will never forget one case I had before I got elected to the Senate. In fact, it was settled after I got out of the law practice and in the Senate. My law partner and I were the only two who tried the case. There was a firm of 12 lawyers in Charleston. There was a firm of 17 lawyers in Columbia. There were some from New York that came in. They had 20-some lawyers. They had to get three tables. And just he and I had an injured party and we were trying the case.

I think back to the fact that particular case never even received an offer of any kind of settlement until it went out to the jury, never a red cent of offer. It was one of the most injurious cases—injuries, clear-cut proof—that I had ever been engaged in. I never could understand why they would not make us an offer.

But you have these insurance company lawyers who will say, ''We don't settle cases.'' They think that is macho and everything else. Translated, we factor it in the cost of litigation. So we have no idea of settling. So what happens? You intimidate the injured party.

Look at a case we had last year in the district court under Judge Ross Anderson with General Motors. General Motors was represented by four of the biggest law firms. They had a grand total from those firms of 1,000 lawyers. Present in the courtroom representing General Motors was the former Attorney General Griffin Bell, the former Attorney General William Barr, the former Solicitor General, Kenneth Starr—you can go down the list—some of the most well known attorneys that you will ever find. They have to be paid $400 to $500 an hour.

You would think that the plaintiff in that case would not bring the case when they have General Motors and all of those lawyers and everything else and have to run the risk of not prevailing and getting all 12 jurors. They talk about consumers and everything else. They are trying inch by inch, yard by yard to get rid of the trial by jury. It has happened in England and they would like to have it happen right now in the United States of America.

That cannot be emphasized too much as it now concerns what we have before us because we have to look at the doughnut and not the hole. We look at all these little ramifications. They will put in any and every kind of amendment that you can possibly think of just to fix this vote or fix that vote or change the vote we had last week, knowing all along that they have kept their word and the amendment is clear.

Then when they get on the other side, they will be telling the truth again when they say, ''Well, you know, Speaker GINGRICH took over and this is his bill, and that is all we could get the House Members to vote for and that is what we got in the conference report.'' And then you really have all of this thing piled on you. That is why some of us in this Chamber struggle so because we can see exactly what is occurring. Everything that was reprehensible in these previous bills by the distinguished Senator from West Virginia, in

the House bills, and considered in separate bills over there and everything else of that kind, is being and is going to be reinserted. And so when they get to conference, just like this bill started as a product liability measure; it soon became a malpractice, a medical malpractice measure. And just as soon as it became a medical malpractice measure, the next thing you look around it was all civil cases that it would apply to. And that is exactly how the conference would go if we did exactly as they wish, and that is let us get this little change here and that little change there, and we will all be happy.

We all have been working hard. We have been on this for several years. And the plea is to what you committed. Laws are really passed at campaign time. Too often it is that these eminent organizations come—the National Federation of Independent Businesses—for one thing only, your vote on their bill. Necessarily you want their support. In fact, they give you a little award, a little statue, and that is the NFIB award. And it is the treasure board award that you get from that small business group.

They have thousands of mailouts. I can tell you, trial lawyers do not have any thousands of mailouts. The others, as well, including consumer organizations, do not mail out anything. They just do not have any PAC's at the supreme courts of the 50 States. The American Bar Association, which opposes this measure, does not have any PAC. They do not have political mailouts. But the NFIB mails out; the chamber of commerce has its meetings as well as the mailouts. The National Association of Manufacturers is strong in my State. They come around, and they have not only mailouts but special manufacturers come around and meet with you and everything else of that kind.

So if you are not studied as to the individual rights of injured parties, you may not realize how horrendous this legislation is, and the detrimental impact it will have on our Nation's civil justice system. What's worse is that it is based on a total distorted record. They lament and lament about punitive damages. However, according to the hearing record, the amount of all of product liability punitive damage awards in the last 30 years adds up to only a fraction of the $3 billion Pennzoil versus Texaco verdict, or the $3 billion verdict in the Exxon Valdez case.

Are they really concerned about consumers? Are they really concerned about the injured parties?

Mr. President, of all civil filings, torts represent 9 percent, and of those tort filings only 4 percent of the 9 percent, are product liability cases—.38—thirty-eight one-hundredths—percent. And this thing has taken 2 weeks now. To do what? To take it away from the States that have had jurisdiction for 230 years, the English law and everything else of that kind, or the regular statutes, the regular burdens of proof, the greater weight of the preponderance of evidence, all 12 jurors have to find it and on appeal and everything, injured party on a contingent basis. It has worked. The States themselves over the past 15 years have reformed their laws, and there is no question in my mind that they are handling it and handling it well. My judges tell me so, particularly my Republican judges that we have confirmed that I am proud of because I voted for their confirmation.

But I wanted to make absolutely sure that we did not have that problem. I am assured of it. But they are trying now to get their foot in the door, and the ultimate goal is to restrict, if not totally eliminate, as they have in England, trial by jury.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

VISIT TO THE SENATE BY PRIME MINISTER OF ISRAEL YITZHAK RABIN

Mr. HELMS. Mr. President, I have the honor of presenting to the Senate—and I shall do that in a minute—the distinguished Prime Minister of Israel, Mr. Rabin.

RECESS

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate stand in recess for 5 minutes so that Senators may greet our distinguished guest.

There being no objection, the Senate, at 4:02 p.m., recessed until 4:07 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CRAIG).

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate resumed consideration of the bill.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

ORDER FOR CLOTURE VOTE TO BEGIN AT 4:20 P.M.

Mr. DOLE. Mr. President, it is my understanding that a couple of our colleagues, one on each side of the aisle, may not be available until 4:15 or 4:20. I ask unanimous consent that the cloture vote scheduled for 4 p.m. today be postponed to occur at 4:20 p.m.

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

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I would also ask unanimous consent that the pending Gorton substitute be modified to reflect to ''Strike all after the first word, and insert,'' and on page 20, line 6, strike ''or (2)'' and on line 14, strike ''or (2)''.

Mr. HOLLINGS. Mr. President, I have discussed this with the leadership. I would have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, let me indicate we were trying to clear up a procedural problem. The Senator certainly has every right to object. It may mean that this will be corrected tomorrow, if cloture is not invoked today. I hope cloture will be invoked today.

EXPRESSING THE SENSE OF THE SENATE ON 50TH ANNIVERSARY OF V–E DAY

Mr. DOLE. Mr. President, today is a very important day for a number of people on this Senate floor. It is V–E Day. May 8, 1945, was a very important day. We have a V–E Day resolution that I think deserves a rollcall. I hope my colleagues would agree that, immediately after the cloture vote, we would have a vote on the V–E Day resolution.

I send that resolution to the desk and ask that it be read.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 115) expressing the sense of the Senate that America's World War II veterans and their families are deserving of this nation's respect and appreciation on the 50th anniversary of V–E Day.

The resolution is as follows:

Whereas on May 7, 1945 in Reims, France, the German High Command signed the document of surrender, surrendering all air, land and sea forces unconditionally to the Allies;

Whereas President Harry S Truman proclaimed May 8, 1945 to be V–E Day:

Whereas May 8, 1995 is the 50th Anniversary of that proclamation:

Whereas, the courage and sacrifice of the American fighting men and women who served with distinction to save the world from tyranny and aggression should always be remembered; Now, therefore, be it

Resolved, That the United States Senate joins with a grateful nation in expressing our respect and appreciation to the men and women who served in World War II, and their families. Further, we remember and pay tribute to those Americans who made the ultimate sacrifice and gave their life for their country.

The Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, it is a very brief resolution. I have taken the liberty of adding World War II veterans as cosponsors. If some do not want to—I have Senator EXON, Senator HOLLINGS, Senator GLENN, Senator INOUYE, Senator STEVENS, Senator HELMS—I think there are a couple of others—Senator HEFLIN.

Mr. HOLLINGS. Senator THURMOND.

Mr. DOLE. Senator THURMOND. I will furnish those names at the desk.

So I hope, unless there is some objection on the other side, that that vote could follow immediately the vote on cloture.

Mr. HOLLINGS. We have no objection.

Mr. DOLE. So, Mr. President, the yeas and nays are automatic on the cloture vote. Let me ask for the yeas and nays on the V–E Day resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

UNANIMOUS CONSENT AGREEMENT—NOMINATION OF JOHN M. DEUTCH, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. DOLE. Finally, Mr. President, as in executive session, I ask unanimous consent that immediately following the cloture vote and the vote on the V–E Day resolution, notwithstanding rule XXII, the Senate go into executive session to consider the nomination of John Deutch, to be Director of the CIA, and that it be considered under the following time agreement: 2 hours equally divided between the chairman and vice chairman of the Intelligence Committee, or their designees; that following the conclusion, or yielding back of time, the nomination be set aside; and that the Senate then return to legislative session, with the vote to occur on the nomination at 10:30 a.m. on Tuesday, May 9, 1995.

I believe this has been cleared on both sides. We will have debate this afternoon and vote tomorrow morning. I know the President very much wants to have this nomination addressed. We are prepared to do that.

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

Mr. DOLE. Mr. President, let me suggest the absence of a quorum unless someone would like to speak. There are 8 minutes before the cloture vote occurs. 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. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. HEFLIN. Mr. President, again, I want to emphasize what this vote is about. It is, of course, about product liability, but it is also the role of the Senate in the legislative process.

The House has passed a bill that contains vast differences from what is proposed in the substitute and what is proposed in the substitute to the substitute.

If we do not take advantage of our rules and do not exercise the role that is intended for the Senate to be a deliberative body, and if we vote cloture, there is no question what will happen is it will go back to the House and I do not think there is much question as to what will happen.

The Speaker of the House will control the conference, and this is going to be a bill regardless of what fixes may have been attempted in the Senate, the version that is going to come out of the conference is going to be the version of the Speaker of the House of Representatives. It comes back here and people say, ''Well, you can exercise your rules and you can have extended debate at that time.'' But we all know what happens on conferences. Their reports come back, people are anxious to get away, and they are arranged at a time to come up where you are in a situation, and we end up, with very rare exceptions, approving conference reports.

So I say to my colleagues, this is a vote not only on product liability but is a vote on the role of the Senate on this bill and other bills that may be coming down in the future.

So I urge my colleagues to vote against cloture. It is very important that they bear in mind the fact that whatever is being proposed here does not mean that that is going to be the final version. The final version, I think, in the judgment of anybody who can see beyond the immediate scene and can see around the corner will be that it will be in conference and it will come out as a Gingrich version of this bill.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I simply want to announce to the friends and supporters of this bill that this will not be a meaningful cloture vote. In the haste to draft the Gorton-Rockefeller amendment, a couple of drafting errors were made that can only be removed at this point by unanimous consent. Unanimous consent, as the body knows, was not granted.

Second, because the Gorton-Rockefeller amendment is in the nature of a substitute, had cloture been granted and had the Gorton-Rockefeller amendment been adopted, which it would have been, it would have cut off all other postcloture amendments from the opponents to the bill and that, too, could only have been waived by unanimous consent.

So I say to Members who have worked on this compromise, they can vote for or against cloture at will. I do not expect cloture to be invoked. I cannot under these circumstances vote for cloture myself. The bill by tomorrow morning will be in proper form, both for its own passage and to allow postcloture amendments. Tomorrow morning's cloture vote will be the significant one on this bill and not the vote that is being taken this evening.

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. 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.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 4:20 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on a substitute amendment to H.R. 956, the product liability bill:

Slade Gorton, Dan Coats, Richard G. Lugar, John Ashcroft, Rod Grams, Kay Bailey Hutchison, Judd Gregg, Strom Thurmond, Jay Rockefeller, Trent Lott, Rick Santorum, Larry E. Craig, Bob Smith, Don Nickles, R.F. Bennett, John McCain, Connie Mack.

VOTE ON MOTION TO INVOKE CLOTURE

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

The question is: Is it the sense of the Senate that debate on amendment No. 690 to H.R. 956, the product liability bill, shall be brought to a close?

The yeas and nays have been required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

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

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

I further announce that, if present and voting, the Senator from Hawaii [Mr. AKAKA] would vote ''nay.''

Mr. LOTT. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. CAMPBELL], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

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

The yeas and nays resulted—yeas 43, nays 49, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—43

Abraham	Exon	Jeffords
Ashcroft	Faircloth	Kassebaum
Bond	Frist	Kempthorne
Brown	Gramm	Kyl
Burns	Grams	Lieberman
Chafee	Grassley	Lott
Coats	Gregg	Lugar
Coverdell	Hatch	Mack
Craig	Hatfield	McCain
DeWine	Helms	McConnell
Dole	Hutchison	Murkowski
Domenici	Inhofe	Nickles

Pressler	Snowe	Thurmond
Santorum	Stevens	
Smith	Thomas	

NAYS—49

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

NOT VOTING—8

Akaka	Harkin	Pell
Bennett	Kennedy	Warner
Campbell	Kerrey	

So the motion was rejected.

The PRESIDING OFFICER. On this vote, the yeas are 43, and the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

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

The motion to lay on the table was agreed to.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I said just before this vote, for technical reasons, given the nature of the amendment, with our 3 o'clock deadline and the haste to file the Rockefeller-Gorton substitute, certain drafting errors were made which could not be cured without unanimous consent. Unanimous consent was not granted. Therefore, Senator ROCKEFELLER and I both voted no on cloture this time around and regard this last vote as essentially meaningless.

Between now and the adjournment of the Senate today, we will introduce a revised second-degree amendment with the majority leader that will reflect our precise views and the agreement that has been made with the consent of, I think, a very substantial majority of the Members, as to the final form of this bill.

Tomorrow we will vote on cloture once again. If we have not been allowed by unanimous consent to adopt that second-degree amendment, the sponsors are confident in making a guarantee it will pass immediately after cloture is invoked.

Mr. President, inquiry: Do we have an order to go on to another subject at this point?

EXPRESSING THE SENSE OF THE SENATE ON THE 50TH ANNIVERSARY OF V–E DAY

The PRESIDING OFFICER. The clerk will report Senate Resolution 115.

The legislative clerk read as follows:

A resolution (S. Res. 115) expressing the sense of the Senate that America's World War II veterans and their families are deserving of this Nation's respect and appreciation on the 50th anniversary of V–E Day.

The Senate resumed consideration of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. CAMPBELL], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA] and the Senator from Massachusetts [Mr. KENNEDY] are necessarily absent.

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

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL], the Senator from Hawaii [Mr. AKAKA], and the Senator from Massachusetts [Mr. KENNEDY] would each vote ''aye.''

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

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—94

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

NOT VOTING—6

Akaka	Campbell	Pell
Bennett	Kennedy	Warner

So, the resolution (S. Res. 115), with its preamble, was agreed to; as follows:

S. RES. 115

Whereas on May 7, 1945, in Reims, France, the German High command signed the document of surrender, surrendering all air, land and sea forces unconditionally to the Allies;

Whereas President Harry S Truman proclaimed May 8, 1945, to be V–E Day;

Whereas May 8, 1995, is the fiftieth Anniversary of that proclamation;

Whereas, the courage and sacrifice of the American fighting men and women who served with distinction to save the world from tyranny and aggression should always be remembered: Now, therefore, be it

Resolved, That the United States Senate joins with a grateful Nation in expressing our respect and appreciation to the the men and women who served in World War II, and their families. Further, we remember and pay tribute to those Americans who made the ultimate sacrifice and gave their life for their country.

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

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

The motion to lay on the table was agreed to.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 709, AS MODIFIED

Mr. GORTON. Mr. President, I send a modification of my earlier amendment to the desk on behalf of myself, Senator ROCKEFELLER, and Senator DOLE.

The PRESIDING OFFICER. The Senator has a right to modify the amendment, and the amendment is so modified.

The amendment, as modified, is as follows:

Strike out all after the first word and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act of 1995''.

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACTUAL MALICE.—The term ''actual malice'' means specific intent to cause serious physical injury, illness, disease, or damage to property, or death.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(3) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term ''clear and convincing evidence'' is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(6) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(7) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(8) HARM.—The term ''harm'' means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(9) INSURER.—The term ''insurer'' means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(10) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(11) NONECONOMIC LOSS.—The term ''noneconomic loss''—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(12) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(13) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(14) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(15) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(16) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(17) TIME OF DELIVERY.—The term ''time of delivery'' means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

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

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

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

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

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

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a

claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing w±as a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101 (14)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 2 times the sum of—

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

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—The amount of punitive damages that may be awarded in a product liability action that is subject to this title against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, shall not exceed the lesser of—

(A) 2 times the sum of—

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

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(3) EXCEPTION.—

(A) DETERMINATION BY COURT.—Notwithstanding subsection (C), in a product liability action that is subject to this title, if the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages in excess of the amount determined in accordance with paragraph (1) to be awarded to the claimant (referred to in this paragraph as the ''additur'') in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under subparagraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the misconduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) REQUIREMENTS FOR AWARDING ADDITURS.—If the court awards an additur under this paragraph, the court shall state its reasons for setting the amount of the additur in findings of fact and conclusions of law. If the additur is—

(i) accepted by the defendant, it shall be entered by the court as a final judgment;

(ii) accepted by the defendant under protest, the order may be reviewed on appeal; or

(iii) not accepted by the defense, the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only, and judgment shall enter upon the verdict of liability and damages after the issue of punitive damages is decided.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(5) Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 108. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 110. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 111. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1995''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to

the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The bio- materials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the bio- materials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the bio- materials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIO- MATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

Mr. GORTON. I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I ask unanimous consent to speak on the amendment.

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

Mr. ROCKEFELLER. I thank the Chair.

Mr. President, there was, to put it mildly, a certain amount of confusion as to what just happened in the last hour or so. I found myself on the telephone advising distinguished Senators with years of experience to vote for what we just voted on and then 5 minutes later to vote against it.

That is not my normal custom in trying to be wise on these matters. But the fact is that, as the Senator from Washington indicated, there were procedural and technical writing problems, and the technical writing problems in the bill in fact were not addressed properly and were not done properly, and they have to be done properly. But make no mistake about it; the news of the day is not that we just had a vote on which some people thought they were going to vote no and they turned out voting yes or vice versa. The news of the day is that the Senator from Washington and the Senator from West Virginia have reached a very good agreement on a final version of the product liability reform that we think reflects the will and the objectives of Senators on both sides of the aisle.

That is where the activity and the time today has, in fact, been spent. It was not spent on, unfortunately, wrapping up the last-moment details. The 4:20 cloture vote really caught me by surprise. But the time today has been spent between the Senator from Washington and the Senator from West Virginia, the Senator from West Virginia consulting with many Senators on my side of the aisle, and the staff of the Senator from Washington and the staff of the Senator from West Virginia working together.

We have reached agreement. That is the news. We have a product liability reform bill which we are now convinced will pass. After 13 years of attempting to do this on the part of some, only 9 years on my part, this is remarkable, remarkable news. I believe that we are in a position now to win product liability reform.

Again, I want to apologize to my colleagues on both sides of the aisle that it has taken us so long to get here, and then, when we got here, at the very last moment, we had this technical writing problem which we, in fact, had to get right and we had not gotten it right, because things were rushed. We are now in the process of doing that. It is very easy. It will be done before the end of the day and we will have the cloture motion tomorrow, which is already ordered, and on we go.

Then, presumably, those who oppose the bill will try to amend it. But the Senator from Washington and the majority leader, Senator DOLE, and I are convinced that we can put aside those amendments, spend the 20 hours or whatever it is that we have remaining in debate, and then go ahead and pass the bill.

This is the story of the legislative process. It is not always beautiful and today was an example of it.

We have on the other hand, I have to say, listened and debated and analyzed and argued every aspect of product liability and the best ways to do reform. It is very controversial. It is something that people have strong feelings on and it is hard to come to an agreement on, which makes even more formidable, it seems to me, the agreement which has been reached that affects the majority leader, the Senator from the State of Washington, the junior Senator from West Virginia, and Senators that the junior Senator from West Virginia has been working with on our side who favor product liability reform.

I think the bill that has been put together, which is now agreed on, deserves support, and I think it will get support. I think, in fact, it will win rather broad support.

So I want the Presiding Officer to be of good cheer and look forward to tomorrow and maybe a day or two after that.

We have made real changes to the section that deals with punitive damages in a way which I think will ease concerns, particularly on my side of the aisle. We have made changes that directly address the concerns of a number of Senators.

I know that this substitute remains balanced, represents real reform, and will solve some problems that have

been crying out for solution for all of these years. I hope the process will untangle itself. I am now confident it will—there was a moment there when we were not sure, but I think it will and I think it has—and we will then be able to give Senators on both sides a chance to vote for good product liability reform.

This is not a product of the Contract With America. It is not a product of the Democratic Party. It is a product of people who want reform on both sides of the aisle, working within the Senate, within our ways, within our beliefs to achieve compromise. That is the way the Senate works.

After all, the President of the United States will have to sign the bill and put it into law. This is what has always struck me when people say that the conference process will ruin everything. I have never felt that. I know the Senator from Washington agrees with me on that, and I suspect the majority leader does. I know I do. Because the President, if he does not want to sign the bill, if it does not meet his criteria, which he has laid out to us, will simply veto it and that will be that. So there is a discipline that works there in conference process, which is good.

I remind my colleagues and the leadership in the other body of what I have just said. We have tended to push aside expansionism here and focus on product liability reform. We do that in the agreement between the Senator from Washington and the Senator from West Virginia. So, let the leadership on the other side understand that we are firm in our resolution, and that the President is, too. He will not sign anything other than what stands within his parameters of acceptability.

So I conclude simply by saying that the sidebar of the day was that there was a certain amount of confusion during the process at the end. But the story is that the two sides have reached agreement—Democrats who favor reform and Republicans who favor reform. I have been through this reform with most of my colleagues on my side and have met with a very good reaction, and I assume the same is true on the Republican side.

So, Mr. President, I simply wanted to say that, because there was a certain amount of confusion, but that pales in comparison to the good news of the agreement.

I thank the Chair and yield the floor.

EXECUTIVE SESSION

NOMINATION OF JOHN M. DEUTCH, OF MASSACHUSETTS, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider Calendar Order No. 114, which the clerk will report.

The legislative clerk read the nomination of John M. Deutch, of Massachusetts, to be Director of Central Intelligence.

The Senate proceeded to consider the nomination.

The PRESIDING OFFICER. The debate on the nomination is limited to 2 hours, equally divided and controlled by the Senator from Pennsylvania and the Senator from Nebraska.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, there have been requests only from Senator MOYNIHAN, who was on the floor, for 15 minutes and from Senator HUTCHISON for 10 minutes, in addition to statements which will be made by the distinguished Senator from Nebraska, the vice chairman, Senator KERREY, and a brief opening statement which I will make. So, in the event that there are any other Senators who wish to be heard on the subject, they ought to come to the floor now or at least let the managers know of their interest in speaking.

Mr. President, the nomination of John M. Deutch to be Director of Central Intelligence was reported to the Senate last week, pursuant to a unanimous vote in the Senate Select Committee on Intelligence with a recommendation that he be confirmed. It was a unanimous vote, 17 to 0.

The committee held hearings on April 26 and then proceeded to that vote last week on May 3. There is a need to move expeditiously, as I see it, to have a strong Director of the Central Intelligence Agency.

In consideration of Mr. John Deutch to be Director, we took up a wide variety of issues. We examined Mr. Deutch's background and qualifications. He has an extraordinary academic record. He has an extraordinary professional record. He has been a distinguished professor at MIT. He has been the head of the department there. He has been the provost there. He has worked in the Energy Department. He has worked in the Department of Defense. He currently serves as the Deputy Secretary of the Department of Defense.

It is my thought, and I believe with the concurrence of the committee members, that he has the kind of strength to take over the management as Director of the Central Intelligence Agency.

He comes to this position at a time of substantial difficulty. He comes to this position at a time when the agency is with substantial problems of morale, in the wake of the Aldrich Ames case, where the agency had a spy within the Central Intelligence Agency which they could not ferret out and eliminate themselves; hardly a recommendation for an agency which is charged with worldwide responsibility to gather intelligence.

There is, in my opinion, Mr. President, the need for intelligence gathering worldwide for the security of the United States.

During the course of the hearings, we explored with Mr. Deutch whether there ought to be a reorganization. His confirmation hearings came in the wake of extraordinary success by the Federal Bureau of Investigation on the Oklahoma City bombing case. We explored with Mr. Deutch whether perhaps the Federal Bureau of Investigation ought to take over on worldwide intelligence gathering. That has been suggested by some.

It would be an extraordinary change for the United States to do that. It would vest enormous authority in the FBI, perhaps more than is wise, in a country where we prize limitations on authority, where we prize separation of power.

The FBI, though, is right now engaged in very extensive operations overseas in work on terrorism as it relates at least to prosecution, work on drug trafficking, work on organized crime, many of those activities being undertaken by the CIA as well. But those were some of the subjects discussed.

I expressed at the hearings considerable concern about the Director of CIA being a member of the President's Cabinet. We have had the experience with Cabinet officers before of the CIA, specifically William Casey, where we had problems on Iran-Contra, and there has been a concern that the policymakers ought to be separated from the intelligence gatherers to the extent there not be the motivation to shade intelligence gathering to support policy, to sort of cook the evidence.

The Iran-Contra Joint Committee made a strong recommendation against that kind of a concern and that kind of activity. But in the final analysis, there is a need to move ahead with the confirmation of the CIA Director, so that it is my judgment, and I think the judgment of others on the committee who were concerned about having the Director in the Cabinet, that we should not hold up his confirmation in that respect.

Mr. Deutch has addressed that question very forcefully and directly, saying that he will be very mindful of those policy considerations and will comport himself so that intelligence gathering is separate from any matters of policy.

Mr. Deutch has made a very forceful statement on taking strong action. If there are those in the CIA, as there were in the Aldrich Ames case, who failed to act when there were lots of indications that Aldrich Ames was in fact not doing his job—when he was intoxicated on the job, when there were unexplained visits to foreign embassies, where he lost his files—Mr. Deutch was emphatic that if anybody was in a position of supervision over another Aldrich Ames and did not take forceful action, that person would be fired peremptorily.

Then the question was raised with Mr. Deutch about somebody who was in a supervisory capacity who did not know but should have known, and Mr. Deutch answered very forcefully that that person would be fired.

Mr. President, there are many people in the CIA who have long, distinguished careers, and there are many able men and women in the Agency who can carry on. It is my hope, I think the hope of the committee, that the morale can be restored by a very firm and forceful Director of the Central Intelligence Agency.

We have recently had hearings on Guatemala which, again, were disturbing, with the Deputy Director of the CIA conceding flatly that the CIA failed in its duty to notify both the House Intelligence Committee and the Senate Intelligence Committee of what was going on in Guatemala.

In sum and substance, Mr. President, it is my view, and I think the view of the committee, that John Deutch is well qualified to take on a very, very tough job at this time.

Mr. President, the nomination of John M. Deutch to be Director of Central Intelligence was reported to the Senate last week pursuant to a unanimous vote of the Senate Select Committee on Intelligence, with a recommendation that he be confirmed. On behalf of myself and Senator KERREY, in our respective capacities as chairman and vice chairman of the committee, we urge the Senate to act favorably on this nomination.

The committee made a complete and thorough inquiry of the nominee's qualifications as well as his views on issues of mutual concern, and concluded that he is qualified by both experience and temperament to hold this sensitive and critical position.

The Senate has moved expeditiously in this important nomination. Nevertheless, the intelligence community has been with out a confirmed director since last December—a delay that is particularly costly when the community so urgently needs a strong sense of direction, of mission, and of management. It is a critical time for the intelligence community. If Mr. Deutch is confirmed as DCI, he will come to the job at a time of exceptional promise and peril.

The peril is clear. It is now conventional wisdom that the euphoria which erupted after the fall of the Berlin Wall and the dissolution of the Soviet Empire was premature. While nostalgia for the balance of terror between the United States and the Soviet Union is not in order, it is apparent that the post-cold-war world is not any less dangerous or unstale—as the bombing in Oklahoma City, the World Trade Center bombing, and the gas attack in the Tokyo subway have made shattering clear. Global threats from international terrorism and narcotics smuggling, the proliferation of weapons of mass destruction, and expanding organized crime networks present the intelligence community with targets far more dispersed and complicated than the traditional focus on Soviet military power. The role and the priorities of the intelligence community in the Government's efforts against these and other threats—efforts which now have significant diplomatic, economic, and law enforcement implications—is very much in need of redefinition and reordering.

Moreover, a series of revelations have illuminated problems in the intelligence community that have severely damaged morale among the rank and file and have eroded the public confidence and trust that is essential for an intelligence apparatus operating in a democracy. From the abuses of power evident in Iran-Contra to the incompetence and lack of accountability that characterized the Aldrich Ames debacle, to charges of widespread sex discrimination, to the latest questions about policies and practices that resulted in, at the very least, an impression of culpability in murders in Central America, there is the sense of an intelligence bureaucracy that is not only incapable of meeting our national security needs but, instead, presents a recurring threat to our Nation's credibility and legitimacy overseas through its frequent missteps, miscalculation, and mismanagement.

The American people are looking for a Director of Central Intelligence who will provide strong leadership, accountability, and a clearly defined mission. And therein lies the promise. There is growing support within the intelligence community, the Congress, and the public for significant change in the way we conduct intelligence. The end of the bipolar superpower conflict that dominated the cold war provides new opportunities to build coalitions and achieve consensus on international threats. And thoughtful application of continuing advances in technology can greatly enhance our efficiency and effectiveness.

This committee, along with the House Permanent Select Committee on Intelligence and a congressionally mandated commission chaired by Les Aspin and Warren Rudman, will be taking a hard look at the intelligence community—what it's mission should be in the post-cold-war world and how it should be organized to accomplish that mission—with an eye to legislation early next year. This is an opportunity to look forward; to begin a new era and establish a new American model for foreign intelligence.

A key issue for that future involves the nature of the office that Mr. Deutch seeks to assume. The DCI must have the ear and the trust of the President. Yet he cannot allow his role as confidante in any way to corrupt the intelligence process or his role as intelligence advisor. This is the concern that underlies questions about the wisdom of giving the DCI Cabinet status.

We have examined the nominee's views on a number of critical issues facing the intelligence community, sought and obtained assurances that his position as a member of the Cabinet would not politicize intelligence, and examined the potential impact of his earlier involvement with issues like the Persian Gulf syndrome on his new appointment. Our objective has been to determine whether he can assert the strong and independent leadership that is so desperately needed. I have concluded that he can and I urge his prompt confirmation by the Senate.

In the remainder of my remarks, I will summarize for my colleagues the nature of the committee's inquiry, and highlight the key features of Mr. Deutch's testimony to the committee.

SUMMARY OF COMMITTEE INQUIRY

As you know, the former DCI, James Woolsey, resigned last December. In February, the administration announced that it planned to nominate retired Air Force General Michael C.P. Carns to replace Woolsey as DCI. One month later, General Carns withdrew his name, citing immigration issues. The administration then turned to Deputy Secretary of Defense Deutch. In announcing on March 11, 1995, the decision to nominate Mr. Deutch as DCI, the White House also announced that the post would be elevated to Cabinet-level status. Mr. Deutch's name was formally submitted to the committee on March 29, 1995.

The committee required Mr. Deutch to submit sworn answers to its standard questionnaire for Presidential appointees, setting forth his background and financial situations. These were submitted to the committee on March 30, 1995.

On April 5, 1995, the committee received a letter from the Director of the Office of Government Ethics transmitting a copy of the financial disclosure statement submitted by Mr. Deutch. The Director advised the committee that is disclosed no real or potential conflict-of-interest.

The chairman and vice chairman also reviewed the FBI investigation done for the White House on Mr. Deutch.

The committee held a confirmation hearing on Mr. Deutch on April 26, 1995, at which time the nominee was questioned on a variety of topics. Subsequently, written questions were submitted to the nominee for additional responses.

Based upon this examination, the committee reported the nomination to the Senate on May 3, 1995, by a unanimous vote, with a recommendation that Mr. Deutch be confirmed.

HIGHLIGHTS OF TESTIMONY

VIEWS ON THE ROLE OF THE DCI—CABINET STATUS

In his opening remarks to the committee, Mr. Deutch described as the primary duty of the DCI ''to provide objective, unvarnished assessments about issues involving foreign events to the President and other senior policymakers.'' He emphasized that ''with the exception of policy that bears on

the Intelligence Community, the Director of Central Intelligence should have no foreign policy making role.'' Speaking directly to the issue of making the DCI a member of the Cabinet, the nominee explained his belief that the President intended this to signal the importance he places on intelligence and the confidence the President has in Mr. Deutch. The nominee went on to present his view that this status is important to ensure that the DCI will be present when policy issues are deliberated so that he can present objective assessments of alternative courses of action and take away from those meetings a better understanding of policymaker needs.

I questioned Mr. Deutch on this issue in meetings prior to the confirmation hearing and again, for the record, in open session. I noted my own view that if you are in the Cabinet, you are much more likely to get involved in making policy than if you are not in the Cabinet. I referred to the congressional report on Iran-Contra and Secretary Shultz's assertion, as reported therein, that the President was getting faulty intelligence about terrorism because there was a problem in keeping intelligence separated from policy. The committee concluded in that report that ''the gathering, analysis, and recording of intelligence should be done in a way that there can be no question that the conclusions are driven by the actual facts rather than by what a policy advocate hopes these facts will be.''

This need to separate policymaking from intelligence gathering and analysis is reflected in the statute defining the National Security Council. The National Security Act of 1947 sets forth the members of the NSC and then designates others, including the DCI and the Chairman of the Joint Chiefs of Staff, as officials who are not members but may attend and participate as the President directs. It is my strong sense that this is the appropriate status for the DCI with respect to the Cabinet as well.

Mr. Deutch has assured the committee that he will hold to the proper standard of conduct and that he would ''not allow policy to influence intelligence judgements and, not allow intelligence to interfere in the policy process.''

I believe that Mr. Deutch has the best of intentions in this regard and that he is certainly capable of recognizing the line between intelligence and policy. The committee will be sensitive to any indication that this standard is not being met. Ultimately, however, the makeup of the Cabinet is a Presidential prerogative and is not statutorily defined.

Given the delay already experienced in naming Mr. Deutch, and given his strong qualifications in every other regard, I do not think this issue should stand in the way of his confirmation by the Senate.

With respect to DCI authorities, the nominee noted in response to questions at the hearing and those submitted later for the record, that in his view, the DCI could more effectively manage the intelligence community if he or she had budget execution authority over key segments of the community.

In further response to questions, Mr. Deutch agreed that this was a propitious time to consider establishing a Director of National Intelligence—who would serve at the pleasure of the President and manage the entire intelligence community—and a separate head of the CIA who would have a 10-year tenure.

VIEWS ON THE MISSION OF THE INTELLIGENCE COMMUNITY

Mr. Deutch's prepared statement outlined some of the significant dangers to our national security today: Regional conflicts; the spread of weapons of mass destruction; international terrorism, international crime, international drug trafficking, and their interconnection; instability in the former Soviet Union; and China—as a threat to its neighbors and supplier of missiles.

He then described four principal purposes to which the intelligence community [IC] should direct its efforts: First, assuring that the President and other policymakers have the best information available before making decision; second, support to military operations; third, addressing international terrorism, crime, and drugs, particularly improving interagency coordination and support to law enforcement; and fourth, counterintelligence [CI] that rigorously adheres to high security standards, accords priority to defensive CI and counterespionage, and includes full and early cooperation within the CI community.

He emphasized that the national priorities for intelligence collection established by the recent Presidential Decision Directive need to be implemented.

VIEWS ON MANAGEMENT

I applaud Mr. Deutch for his unusually candid and forthright opening statement. In it, he outlined for the committee the significant actions he would take immediately upon confirmation to begin the process of change that is so long overdue in the intelligence community, or ''IC.'' First, he indicated he would bring in several new people to fill upper management positions. In doing so, he will emphasize joint operations of the IC agencies because ''we can no longer afford redundant capabilities in several different agencies.'' Second, he plans to review and encourage changes in the culture and operation of the Directorate of Operations. Third, he will move to consolidate the management of all imagery collection, analysis, and distribution in a manner similar to the NSA's for signals intelligence. Fourth, he wants to manage military and intelligence satellite acquisition in a more integrated way. Fifth, he will put in place a planning process for meeting the priorities and goals established by the Presidential Decision Directive. Sixth, what he described as his most important challenge is to ''improve the management—and thereby the morale—of the dedicated men and women who make up the IC.''

RESPONSE TO AMES

The issue of management is particularly critical in the wake of Ames. I questioned Mr. Deutch on how he would ensure that he knew what was going on within the CIA so that he could exert the proper management. I cited former Director Gates' admission that by 1987, he had only been advised of about 4 or 5 compromises of U.S. agents, at a time when there were in fact 40 or more compromised operations. Director Gates complained that ''nobody bothered to share that information with Judge Webster, my predecessor, or with me,'' when Gates was his Deputy.

I wanted to know what action Mr. Deutch would take if he identified a person that had a pretty good idea that Aldrich Ames was a mole but failed to pass that information on up the chain of command to the Director. Mr. Deutch said he would terminate that individual. Moreover, when asked about reports that the supervisor of Ames, who knew that Ames had an alcohol dependency and had observed the negative consequences of this dependency, had not only failed to fire Ames, but had, instead, written a highly complimentary review of his performance, Mr. Deutch indicated that supervisor should be fired. When questioned further, he conceded that if the supervisor's supervisor should have known about this improper conduct, that supervisor should also be fired.

The key in this exchange, as emphasized by the nominee, is the notion of accountability. It is a sense of accountability that was absent under the last DCI and that is an essential ingredient of any plan to revitalize our foreign intelligence apparatus.

Mr. Deutch has told the committee that if confirmed, he will review the Ames case and will consider the committee's report on Ames in connection with any personnel action affecting the individuals involved.

VIEWS ON CONGRESSIONAL OVERSIGHT

On the issue of congressional oversight, Mr. Deutch emphasized in his opening statement that he could not accomplish the significant change that is needed in the intelligence community without the strong support of Congress. ''I consider you my board of directors'', he said. ''I realize this means I must keep you fully and currently informed about the activities for which I would be responsible—both the good news and the bad news. I understand that I am accountable to you, and I expect you to hold me to a high standard of performance.''

Mr. Deutch conceded, when questioned, that, while he could not imagine it happening, if the President ever told him not to inform the committee he, Mr. Deutch, would ''go happily back to Massachusetts.''

Moreover, the nominee assured the committee that he interprets the requirement for timely notification of a covert action finding, in the absence of prior notification, to mean within 48 hours. Specifically, Mr. Deutch said, ''I think that in all situations there should be prior notification. There may be remote instances where that is not possible, in a very, very tiny percentages of the cases. Then 48-hours is what I see as the measure of timely notification.''

COMMITMENTS FOR PROMPT ACTION

At the conclusion of the hearing, I asked for, and received, a commitment from Mr. Deutch to report back to the committee as promptly as possible if confirmed—preferably within 30 days of confirmation—regarding several issues of particular importance;

First, report on any needed changes to DCI authorities;

Second, improving the intelligence community's fulfillment of its obligation to keep Congress fully and currently informed;

Third, the need for reorganization within the intelligence community;

Fourth, changes in personnel;

Fifth, proposal for how to achieve downsizing in a way which creates headroom, weeds out poor performers, and leaves the intelligence community with the mix of skills required to accomplish its mission;

Sixth, intelligence reassessment of the possibility that U.S. forces were exposed to chemical or biological agents during Desert Storm;

Seventh, actions taken in response to events in Guatemala; and

Eighth, improving coordination with law enforcement.

CONCLUSION

The foregoing summarizes only the highlights of the record before the committee, which is, of course, available to all Members in its entirety at the Intelligence Committee.

Based upon the nominee's statements to the committee, however, his record of distinguished service and the absence of any disqualifying information concerning him, the Senate Select Committee on Intelligence voted to report his nomination to the Senate with a recommendation that he be confirmed by the full Senate as Director of Central Intelligence.

Mr. President, before yielding the floor, I want to commend my distinguished vice chairman, Senator KERREY, for his outstanding work generally with the committee and on this nomination.

The only other speaker who is to come to the floor on our side is Senator HUTCHISON, who has an allotment of 10 minutes, but I think there will be more time within the unanimous-consent agreement if Senator HUTCHISON wants more time. Or if any other Republican Senators wish to partake in the discussion, they can take time on our side.

I thank the Chair and yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I rise in enthusiastic support of the nomination of John M. Deutch to be Director of Central Intelligence. While I cannot predict a length in time that he will be in service to his country in this capacity, I can predict with confidence, should he be confirmed, he will turn out to be one of the most effective and influential DCI's in the history of this Agency.

The President of the United States, with John Deutch, is making a statement that he intends to send a man to take charge of Langley during what is obviously one of the most tumultuous periods ever experienced by Central Intelligence. The Aldrich Ames case and recent Guatemala revelations portray a troubled corporate culture at CIA.

In addition, many question whether the intelligence community has come to grips with the post-cold-war world and whether new collection methods and technologies are required to target the new threats that have emerged.

The twin threats of international and domestic terrorism lead many to question the intelligence community's proper role in supporting law enforcement. The very structure of the community is in question, as a joint Presidential-congressional commission and several private study groups ask whether intelligence is necessary at all.

Mr. President, we have been watching, once again, another 50-year celebration in the last couple of days. This time the celebration is the 50th anniversary of the day that victory in Europe was declared over Nazi forces. That victory is being celebrated in part because we are also celebrating the fact that over the last 47 or so years, we have avoided, with significant efforts, a third world war. For a 75-year period, roughly from 1914, when the guns of August started World War I, until the fall of 1989 when the Berlin Wall itself collapsed and Eastern Europe began to liberate itself, during that 75-year period, it is, I believe, accurate to say we experienced the bloodiest 75 years in the history of mankind.

During that 75-year period, Mr. President, many things occurred, including the institution of a policy that had the United States of America leading an effort against a clearly identified enemy, and the celebration that takes place this year is not just a celebration of a victory over that enemy, but a sense that we have survived, as a human people, the forecast that we may annihilate ourselves through the use of nuclear weapons. It is a remarkable victory, and I dare not on this floor take a great deal of time describing it, but it is a profound change that the new Director of Central Intelligence must factor in as that individual, hopefully John Deutch, begins to shape the agencies under his control to meet the new challenges that this country faces.

You might expect that only somebody who was a glutton for punishment would willingly volunteer and walk into the set of problems that John Deutch will face. But I can assure my colleagues, as the distinguished chairman of the Committee has already said, that John Deutch knows better than this. He knows, as many of us on the Intelligence Committee know, we have a superb intelligence instrument in this country staffed by brave and intelligent people who take risks every single day and make sacrifices for their country. They provide the President, the military, the Cabinet, our diplomats and intelligence analysts a capability no other country can rival: the capability to know most about threats to our country's freedom and independence, and threats to the lives and livelihoods of Americans.

Unlike the domestic agencies, our intelligence professionals cannot brag about their competence. To brag would lose the all-important source of information. So they are generally silent, but they are of immense value. They need guidance, they need leadership, they need a visionary who can help focus their talent on the Nation's pressing needs, and John Deutch is the person to do it. Adm. Bill Studeman has rendered a vital service as Acting Director. He has kept a complex enterprise on track during a difficult period, and the Nation owes him its thanks. He would be the first to agree that the intelligence community needs a Presidentially appointed, senatorially confirmed director.

Even if John Deutch's service in the Defense Department were his own accomplishment, he would be a strong candidate to be DCI. Most intelligence funding is in defense, the military continues to be the leading customer for intelligence, and his knowledge of defense intelligence is matched by few in and out of our Government.

But another part of John Deutch's résumé appeals to me. John Deutch is a scientist of national renown and a distinguished science professor. Technical intelligence collection is mainly a science problem. The scientific decision of which system to buy or develop to best collect against a certain threat is typically made by lawyers advised by scientists. In this administration, however, the scientists have come to the fore. I, for one, feel very comfortable knowing that the scientific judgment of Bill Perry is making the ultimate acquisition decisions in defense, and I will feel equal comfort with John Deutch's scientific judgment on intelligence acquisitions. The fact that he is a teacher and can explain these complex systems to those of us nonscientists, who are charged with intelligence oversight, is that much better for the American people.

We will get the benefit of Dr. Deutch's scientific expertise not a moment too soon. New threats, new collection priorities, and a rapidly changing collection environment mean that

we cannot stand pat on our collection technologies. Just to maintain the edge we have now, we must fund research and development on new technologies and make hard decisions about which road we will go down.

We also have to maintain the health of our intelligence industrial base, the private companies that produce these remarkable systems. There are uniquely talented people working for these companies, engineers and technicians who turn the requirements statement into reality. If we do not keep these people at work in profitable undertakings, the Government will never be able to afford new systems. That is why Senator WARNER and I, last year, urged the administration to permit U.S. companies to sell 1-meter space imagery and imaging equipment. We did not want to see remote sensing, a technology in which we lead the world, go the way of the space launch. We also wanted America to dominate this growing industry. The administration saw it the same way, and John Deutch is a firm supporter of the administration policy. He knows that our industrial base is our true national treasure, and he will continue to watch over its health.

Intelligence technology routinely saves American lives, but we should be alert to opportunities to make it useful to Americans in other ways. For example, the National Information Display Laboratory in Princeton, NJ, noticed that the technology that helped imagery analysts understand images better could also be helpful to radiologists scanning a mammogram for early signs of breast cancer. NIDL teamed with Massachusetts General Hospital to adapt the technology, and the outcome could be as many as 15,000 American lives saved each year.

Other opportunities abound for the dual-use intelligence technology. We have just begun to make public use of space images and other intelligence collected during the cold war. The declassification process has begun and we must push the process until we can fairly say that intelligence technology serves not just a handful of decisionmakers in Washington but the 250 million decisionmakers across our country.

Mr. President, when I was a young man operating in the U.S. Navy Seal team, we had a piece of advice we tried to follow all of the time, which was that unless you had a need to know something, you did not press the bet and try to acquire it. We did not disseminate intelligence to people who did not have a need to know. Mr. President, there are 250 million citizens of the United States of America who need to know increasingly a set of complex facts in order to make decisions about our foreign policy, in order to make decisions about our domestic policy, in order to make decisions about all sorts of things that are increasingly confusing our citizens.

Democracy cannot function unless citizens make the effort to understand those complexities and come to the table at election time and come to the table when it is time to influence their Senator or Representative or President with all of the facts and information.

The Director of Central Intelligence is the President's national intelligence officer. John Deutch's Government background is in defense, and his testimony before the Committee made clear that he understands the priority of intelligence support to the military. But he also understands the role of national intelligence, and he understands that not every problem facing the country is a military problem. He is aware, for example, of the intelligence community's contributions against international terrorism, against drug trafficking, against illegal trade practices. He knows how important intelligence is to this administration's international economic decisionmaking, and he knows that warning the President about the economic crisis in Mexico last year was at least as important as warning about a military crisis in some less important region of the world. It is ironic that, with the end of the cold war, the Director of Central Intelligence has a broader national charter than ever. It is an irony which John Deutch understands.

The intelligence community includes much more than the CIA. The National Security Agency, the Defense Intelligence Agency, FBI, and the State Department's Bureau of Intelligence and Research all play their largely unique roles. But no question, CIA, unfortunately, lately has been at the center of controversy and likely will continue to be. At least initially, the heart of John Deutch's task will be to make the CIA more efficient and accountable to the American people. I am greatly encouraged, as the chairman indicated earlier, by his testimony on the sense of accountability and responsibility that he intends to bring to CIA's Directorate of Operations. I have visited CIA officers in the field, and I know the high quality of the people John Deutch will lead. These are clear-headed, positive, enthusiastic Americans. The current senior managers should get credit for recruiting and training and motivating a fine crop of younger officers. Now it is time, as Mr. Deutch put it in his own testimony, for the seniors to let the younger officers take the reins.

As they take over, they must recruit and retain more women and minorities, and they must be alert to gender discrimination in assignments and promotions. The Directorate of Operations has never been an easy place for women to get a fair opportunity to make their mark. Not only is gender discrimination illegal, it is also stupid because it denies the American people the brain power of more than 50 percent of our people. It also creates resentments which can dangerously weaken the agency. I have heard all the excuses for discrimination, and none of them wash. I am confident that John Deutch will not permit it.

CIA's human intelligence activities, which consist mainly in getting foreigners to secretly provide information, will always take place in the shadows. Human sources will have to be protected, so the activities will not be able to be publicly discussed. But CIA, no less than any other agency of Government, must operate in accordance with American law and American values. One purpose of congressional oversight of intelligence is to ensure that this is so. Oversight cannot work if CIA does not inform Congress, or answer Congress' questions. Failure to promptly inform is one of the most troubling aspects of both the Ames case and the Guatemala case. Bad news does not improve with age. The withholding of bad news—withholding information on an intelligence failure—jeopardizes the oversight system without which the United States cannot conduct foreign intelligence operations. John Deutch clearly understands his reporting responsibilities, and I believe Directors Gates and Woolsey and Studeman also understood. The challenge for John Deutch is to know what is happening inside his organization, so the bad news gets to him first.

That is the mark of a tight, confident, organization. John Deutch has some great material to work with, but it is up to him to forge that kind of organization.

If anybody in this great country of ours is up to that job, John Deutch is the person to get the job done.

I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York [Mr. MOYNIHAN] is recognized.

Mr. MOYNIHAN. I thank my gallant friend from Nebraska. I rise very much in support of the position he has taken and that of the distinguished chairman of the committee, the Senator from Pennsylvania.

I would say by way of introduction that in the 103d Congress and then on the first day of the 104th Congress, I offered legislation that would basically break up the existing Central Intelligence Agency and return its component parts to the Department of Defense and the Department of State in the manner that the OSS, the Office of Strategic Services, was divided and parceled out with the onset of peace in 1945 and 1946, to be followed, of course, by a cold war which has persisted almost until this moment.

I had hoped to encourage a debate on the role of intelligence and of secrecy in the American society. That debate has taken place. Some of the results, I think, can be seen in the nomination of this distinguished scientist and public servant to this position.

It could not have been more clear than in his testimony in which he made a point, self-evident we would

suppose, but not frequently to be encountered in the pronouncements of potential DCI's. He said:

Espionage does not rest comfortably in a democracy. Secrecy, which is essential to protect sources and methods, is not welcome in an open society. If our democracy is to support intelligence activities, the people must be confident that our law and rules will be respected.

It may have come as a surprise—although it ought not to have—in recent months and weeks, to find how many persons there are in this country who do not have confidence that our laws and rules will be respected; who see the government in conspiratorial modes, directed against the people in ways that could be of huge consequence to Americans.

I am not talking about what Richard Hofstadter referred to when he spoke of ''the paranoid style in American politics.'' I am talking about the widespread belief that the CIA was somehow involved in the assassination of President Kennedy, if we can imagine. But there it is.

It is important to understand how deep this is in our society. In 1956, even before Hofstadter spoke of it; Edward A. Shils of the University of Chicago—who just passed away—that great, great, social scientist, published his book, ''The Torment of Secrecy,'' in which he wrote ''The exfoliation and intertwinement of the various patterns of belief that the world is dominated by unseen circles of conspirators, operating behind our backs, is one of the characteristic features of modern society.''

Such a belief was very much a feature of the Bolshevik society that took shape in 1917 and 1918. The conspiratorial decision to help found and fund in the United States, a Communist party, half of which would be class destiny, the discovery from the archives in Moscow that John Reed received a payment of $1.5 million in 1920. Even as soft money, that would be a very considerable sum today.

In the pattern that societies go through, it is said that organizations become like one other. To an extraordinary degree we emulate the Soviet model in our own intelligence service.

Unintentionally, naturally, it happens that way, but a very powerful analyses of this has just been written by Jefferson Morley in the Washington Post under the headline ''Understanding Oklahoma'' in an article entitled ''Department of Secrecy: The Invisible Bureaucracy That Unites Alienated America in Suspicion.''

Or by Douglas Turner, in an article this weekend in the Buffalo News. I spoke of these concerns in an earlier statement on the Senate floor entitled ''The Paranoid Style in American Politics,'' which I ask unanimous consent be printed in the RECORD along with the articles by Douglas Turner and Jefferson Morley.

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

(See exhibit 1.)

Mr. MOYNIHAN. Mr. President, what we have is so much at variance with what was thought we would get.

Allen Dulles was very much part of the foundation of postwar intelligence, having been in the OSS, served with great distinction in Switzerland during World War II.

Peter Grose, in his new biography, ''Gentleman Spy: The Life of Allen Dulles,'' recounts the testimony Dulles gave before the Senate Armed Services Committee on April 25, 1947, as we are about to establish, passed the National Security Act of 1947 and created this small coordinating body, the Central Intelligence Agency.

Personnel for a central intelligence agency, he argued, ''need not be very numerous * * *. The operation of the service must be neither flamboyant nor overshrouded with the mystery and abracadabra which the amateur detective likes to assume.'' In a lecturing tone, he tried to tell the Senators how intelligence is actually assembled.

Because of its glamour and mystery, overemphasis is generally placed on what is called secret intelligence, namely the intelligence that is obtained by secret means and by secret agents. . . . In time of peace the bulk of intelligence can be obtained through overt channels, through our diplomatic and consular missions, and our military, naval and air attahcés in the normal and proper course of their work. It can also be obtained through the world press, the radio, and through the many thousands of Americans, business and professional men and American residents of foreign countries, who are naturally and normally brought in touch with what is going on in those countries.

A proper analysis of the intelligence obtainable by these overt, normal, and aboveboard means would supply us with over 80 percent, I should estimate, of the information required for the guidance of our national policy.

Mr. President, that could not happen, did not happen. We entered upon a five-decade mode of secret analysis, analysis withheld from the scrutiny, which is the only way we can verify the truth of a hypothesis in natural science or the social sciences.

The result was massive miscalculation, Nicholas Eberstadt in his wonderful new book, ''The Tyranny of Numbers,'' writes ''It is probably safe to say that the U.S. Government's attempt to describe the Soviet economy has been the largest single project in social science research ever undertaken.'' He said that, sir, in 1990, in testimony before the Committee on Foreign Relations. ''The largest single project in social science research ever undertaken,'' and it was a calamity.

No one has been more forthright than Adm. Stansfield Turner in an article in Foreign Affairs about this time. He said when it came to predicting the collapse of the Soviet Union, the corporate view of the intelligence community was totally wrong.

I can remember the first years of the Kennedy administration. I remember having a meeting with Walt Rostow, Chairman of the Policy Planning Council in the Department of State, in which he said of the Soviet Union, I am not one of those 6 percent forever people, but there it was, locked into the analyses. That is what the President knew.

Mr. President, in Richard Reeves remarkable biography of John F. Kennedy, he records that the agency told the President that by the year 2000 the GNP of the Soviet Union would be three times that of the United States. And that is what the President knew. A person might come to him with the most reasonable arguments, as did any number of economists. The great theorists, Friedman, Hayek, Stigler, said it could not happen, it would be theoretically impossible. Important work done by Frank Holzman, at Tufts, and the Russian Research Center at Harvard said, ''No, no. That is all very well what you say professor. What I know is different.''

The consequences have been an extraordinary failure to foresee the central event of our time. A vast overdependence on military and similar outlays, that leave us perilously close to economic difficulty ourselves.

I would like to close with a letter written me in 1991 by Dale W. Jorgenson, professor of economics at the Kennedy School of Government, in which he said:

I believe that the importance of economic intelligence is increasing greatly with the much-discussed globalization of the U.S. economy. However the cloak-and-dagger model is even more inappropriate to our new economic situation than it was to the successful prosecution of the Cold War that has just concluded. The lessons for the future seem to me to be rather transparent. The U.S. government needs to invest a lot more in international economic assessments. * * * (I)t should reject the CIA monopoly model and try to create the kind of intellectual competition that now prevails between CBO and OMB on domestic policy, aided by Brookings, AEI [American Enterprise Institute], the Urban Institute, the Kennedy School, and many others.

I ask unanimous consent the entire letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. MOYNIHAN. Those are the remarks I would like to make, sir. I have the confidence that John Deutch, as a scientist, will follow them. I have the concern that the administration will not.

We do know some things in social science. Mancur Olson, in his great book, ''The Rise and Decline of Nations,'' on this day, V–E Day—I was a sailor on V–E Day, so I can remember that—I can remember the Boston Common, actually— Mancur Olson asked:

Why has it come about that the two nations whose institutions were destroyed in World War II, Germany and Japan, have had the most economic success since? Whereas Britain—not really much success at all; the United States—yes, but.'' And he came up with a simple answer. The defeat wiped out all those choke points, all those rents, all

those sharing agreements, all those veto structures that enable institutions to prevent things from happening. And we are seeing it in this Government today, 5 years after the wall came down.

Remember, 2 years before the wall came down the CIA stated that per capita GDP was higher in East Germany than in West Germany. I hope I take no liberty that I mentioned this once to Dr. Deutch and added ''Any taxi driver in Berlin could have told you that was not so.'' And Dr. Deutch replied, ''Any taxi driver in Washington.'' But if we cannot summon the capacity to change our institutions in our changed circumstances, there will be consequences and let nobody say they were not predictable.

Mr. President, I thank the Senator from Texas for her graciousness for allowing me to speak when in fact in alternation it would have been her turn.

EXHIBIT 1

[From the Congressional Record, Apr. 25, 1995]

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 no 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 befitted 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 Plus 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) divined 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 Protest 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 scepter, 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 off towards the Potomac. Save for the occasional ''sighting'', as we have come to call such phenomena, it has 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 Lieutenant Colonel 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 describe in Richard Hofstadter'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 overreached, 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.

[From the Buffalo News, May 8, 1995]

GOVERNMENT SPOOKS, BEWARE—MOYNIHAN AIMS TO REVEAL SECRETS

(By Douglas Turner)

WASHINGTON.—For generations, artists like Jules Verne, Graham Greene, Steven Spielberg, and Peter Benchley in his novel ''White Shark,'' have harnessed the public's flirtation with fear for innocent profit, fame and fun.

There is something lurking out there, or down there created by a force beyond our knowing.

Far down the creative scale are conspiracy freaks Oliver Stone, Ian Fleming and the publishers of checkout-counter tabloids.

In dank corners of our society is a separate category: Those who subsist utterly in paranoia: Oliver North, Gordon Liddy, David Duke, Tim McVeigh and those who put on war paint and military fatigues, play with assault weapons, and preach war against a popularly-elected constitutional government.

Like Sen. Joseph R. McCarthy, they nurse on paranoia and propagate it.

Sen. Daniel Patrick Moynihan, D-N.Y., suggests this last category either exploits, or is partly driven by the web of government secrets that has grown like spores since World War II.

He speaks of official Washinton's ''enormous secrecy system . . . which just expands, if anything, which we're in on and everyone out there is not, is out of, and easily it's a culture that breeds paranoia.''

For years, Sen. Moynihan has been sounding a warning about what he calls our culture of paranoia. In an article he penned four years ago, Moynihan said Stone's film, ''JFK,'' could ''spoil a generation of American politics just when sanity is returning.''

Realizing he couldn't do much about popular culture, Moynihan set about stripping down government's role in creating fear by going after the mountain of official secrets generated annually.

To that end, on Jan. 22, 1993, Moynihan introduced a bill creating a bipartisan commission on reducing and protecting government secrecy. A Democratic Congress passed it and President Clinton made it law.

The commission had its first meeting in January and elected Moynihan chairman. Other members include Sen. Jesse Helms, R-N.C., who was appointed by Sen. Majority Leader Bob Dole, R-Kansas; Ellen Hume of Annenberg Washington Program, who was named by the president; a Harvard professor, and Clinton's nominee to head the CIA, John Deutch.

It has an office in an old Navy Building with view of the Potomac, and a staff director, Eric Biel, formerly a senior Senate staffer. It has had a couple of organizational meetings, all public. And its first real working session will be on May 17.

Moynihan in a television interview joked ''we've managed to conceal our activities so far by holding public hearings. Nobody goes to public hearings.''

On the 17th, the commission will hear about official secrets from officials of the National Security Council, who are cooperating as a result of an executive order issued by President Clinton three weeks ago.

Government files harbor nearly a billion official secrets.

It generates about 7 million of them a year. But the secret, Moynihan wrote, is that the government ''only counts (secrets) up to the level of Top Secret.

''All the real secrets are higher than that with code names I am not at liberty to reveal, having taken a kind of vow of secrecy when I became vice chairman of the Senate Select Committee on Intelligence,'' he said.

Three million government employees have security clearances up to top secret. This is fairly common stuff as most field grade military officers, beginning with lieutenants, are entitled to top secret access.

The plethora of secrets, security levels and ''cleared'' employees has made a joke of the security system itself—with ''secret'' material spilled into defense and intelligence trade publications every day.

''They'' can see it, but you can't.

Then there are the active classified files of the FBI, the Bureau of Alcohol Tobacco and Firearms, the Secret Service, the Customs, Immigration and Naturalization Service, the Border Patrol, the Department of Energy, and even the Department of Agriculture.

Official secrecy, endemic to big government, dies hard. As in corporate life, and in the highest aeries of journalism, secrets are not just the key to power. They are power.

Official infatuation with secrecy is reflected in the forbearance in President Clinton's executive order. Existing secrets must be declassified after 25 years, he said. Future ones after 10 years.

This would matter in an age when breechload rifles were on the cutting edge of military science. The standard is ridiculous in the light of today's expanding technology.

Thanks to the reports the CIA issued—based on ''evidence'' you and I could never

see or evaluate—on Soviet weaponry and the economy, this country went on a military spending binge beginning with the Vietnam war and ending only three years ago.

But these CIA fabrications served to justify quantum leaps in spending on the American defense establishment, and of course covert CIA. We will be paying for that build-up for the rest of our lives.

[From the Washington Post, Apr. 30, 1995]

DEPARTMENT OF SECRECY

THE INVISIBLE BUREAUCRACY THAT UNITES ALIENATED AMERICA IN SUSPICION

(By Jefferson Morley)

Scapegoating is a time-honored spring sport in Washington. Professionals of the pastime are already in fine mid-summer form on Topic A: Who is responsible for the Oklahoma City bombing? Skillful soundbites indict various culprits: Right-wing talk radio, the NRA, lone nuts and (the ever-reliable) '60s counterculture.

But while the theories fly, the All-Stars of the Washington blame game somehow overlook one of the leading suspects in the minds of the American people: the Department of Secrecy.

There is no official department of secrecy, complete with Cabinet officer and official seal. But there is the functional equivalent: the federal bureaucracy that keeps the government's secrets. It consists of the offices and archives in the Pentagon, the intelligence agencies, the FBI, the Bureau of Alcohol Tobacco and Firearms and other federal agencies that classify and guard all sorts of information considered too sensitive to be shared with the American public. The connection between this empire of information and the Oklahoma City bombing is not obvious but it is real.

First, the Department of Secrecy is a significant presence in American society and politics. Viewed on an organizational chart, the federal secrecy system is bigger than many Cabinet agencies. According to a Washington Post report last year, the secrecy system keeps an estimated 32,400 people employed full-time—more than the Environmental Protection Agency and the Department of Education combined. According to the Office of Management and Budget, the bureaucracy of secrets may cost as much as $16 billion a year to run.

Second, mistrust of the government and its many secrets is now raging out of control. The assumption that the government is not accountable for its actions is now the norm.

It is an article of faith among many on the religious and paramilitary right (including, apparently, one of the bombing suspects in custody) that the federal government has not been held accountable for the 1993 raid in Waco which left 85 people dead.

Liberals and the left were angered but not surprised by the recent revelations about the CIA in Guatemala. In the name of protecting its ''sources and methods,'' the agency shielded from justice the Guatemalan colonel who is the leading suspect in the murder of an American innkeeper and the husband of an American lawyer.

Robert McNamara's memoirs are an infuriating reminder to moderates that the veil of secrecy allowed utterly respectable mainstream Washington officials to send thousands of American boys to slaughter in a disastrous and still-divisive war.

In the movie theaters of America, the most treacherous, evil Hollywood villains often work inside the Department of Secrecy. Popular movies like ''Outbreak'' and ''Clear and Present Danger'' routinely depict senior officials in Washington as smooth-talking criminals who think nothing of betraying the public trust and sending innocent Americans to their death.

''The pathology of public attitudes toward government are due in large part to excessive and unnecessary secrecy,'' says Steven Aftergood of the American Federation of Scientists, a leading advocate of government openness in Washington.

The State Department, for example, retains the right to withhold information that would ''seriously and demonstrably undermine ongoing diplomatic activities of the United States.'' Under this standard the CIA-in-Guatemala story would almost certainly still be secret and two American women would still be wondering who murdered their husbands.

For now, the effect of Clinton's order is expected to be modest.

''I don't think it's going to make much difference,'' said retired Lt. Gen. William Odom, the former director of the National Security Agency and a skeptic of openness efforts. Odom recalled that a similar directive from President Carter in 1978 had little effect on how he, Odom, actually classified information for the government at the time.

Aftergood praised Clinton's directive as a distinct improvement over the old secrecy rules but added ''I just hope we are at the beginning of a reform process, not the end.''

That will depend, in part, on what the public, the president and Congress learn from Oklahoma City.

Is the bombing the work of isolated madmen with no connection to the larger political culture? Or is it a warning of the pathological possibilities opened up when the federal government loses the faith of its people?

These questions are especially pertinent for people working within the secrecy system. Most of them do not hide wrongdoing from the American people. The information they guard is often legitimately secret: military codes, the names of law enforcement informants, the U.S. position in international trade talks and the like.

But they shrug off the widespread mistrust of their work at their own peril. With the government generating so many secrets each year—an estimated 6.3 million in 1993—and continuing revelations about governmental abuses of power, the line between the paranoia of a few and legitimate fears of the many gets harder to draw.

A few years ago, the notion that the U.S. government had, over the course of several decades, routinely conducted dangerous radiation experiments on thousands of unwitting Americans would have been regarded by most reasonable people as unfounded, if not ridiculous. Today, thanks to the aggressive release of long-secret documents by Secretary of Energy Hazel O'Leary, the radiation experiments are cold, disturbing historical fact.

O'Leary's leadership shows that full disclosure of embarrassing material is not political or institutional suicide. In fact, the Department of Energy, by all accounts, enjoys more credibility on Capitol Hill and with the public for coming clean.

We don't know what other abuses of governmental power, if any, the secrecy system is hiding. But we do know that a citizenry without access to its own history has no guarantee of democratic accountability. And as long as democratic accountability is in doubt, the citizenry, not just government office buildings, will remain vulnerable.

EXHIBIT 2

HARVARD UNIVERSITY, JOHN F. KENNEDY SCHOOL OF GOVERNMENT,

Cambridge, MA, March 18, 1991.

Senator DANIEL PATRICK MOYNIHAN,
U.S. Senate, Washington, DC.

DEAR PAT: This is just a personal note of thanks for your eloquent and stimulating contribution to the lunch discussion with the new National Research Council Board on Science, Technology, and Economic Policy last Friday. Needless to say, I think you are absolutely right about the significance of the long-standing intelligence failure in assessing the Soviet economy and the Soviet military effort. While I do not concur with your Galbraithian view of economics as a failed profession, this has to be one of the great failures of economics—right up there with the inability of economists (along with everyone else) to find a remedy for the Great Depression of the 1930's.

On your specific arguments: In 1985 Paul Samuelson was relying on the CIA estimates, so that this is not an independent piece of evidence. For every quotation you can give from people like Lawrence Klein, you can find a counter-argument in the writings of Friedman, Hayek, Stigler and many others. All three have been amply rewarded for their efforts with the Nobel Prize, the National Medal of Science, and the esteem of their colleagues (with the conspicuous exception of your former neighbor on Francis Avenue). They deserve a lot of credit for the positions they took in the 1930's all the way up to the 1980's and they are getting it.

It seems to me that it is better to address the issue of international economic assessments within your framework of post-Cold War recoversion that Galbaith's entertaining but wrong-headed view of economics as a failed profession. Given the importance of economic assessments of the Soviet Union, it is almost incredible that the U.S. government established an in-house monopoly on these assessments. The principal academic centers for research in this area at Columbia and Harvard were allowed to wither away. Over the past decade, Frank Holzman of Tufts and the Russian Research Center at Harvard has been a lonely voice in opposition to the CIA view.

I believe that the importance of economic intelligence is increasing greatly with the much-discussed globalization of the U.S. economy. However, the cloak-and-dagger model is even more inappropriate to our new economic situation than it was to the successful prosecution of the Cold War that has just concluded. The lessons for the future seem to me to be rather transparent. The U.S. government needs to invest a lot more in international economic assessments. Second, it should reject the CIA monopoly model and try to create the kind of intellectual competition that now prevails between CBO and OMB on domestic policy, aided by Brookings, AEI, the Urban Institute, the Kennedy School, and many others.

An important subsidiary lesson we can learn from the failure of the CIA Soviet assessments is the importance of ''sunshine''. Although economic intelligence is always going to be sensitive to somebody, it should be carried out in full sight of the public, including the professional peers of the intelligence analysts. I hope that the new National Research Council Board can contribute to the post-Cold War re-conversion of our economic intelligence establishment in a positive way. As I see it, this is a daunting task. To use a medical analogy, this will require something more like a ''life style'' change than a simple remedy for a chronic disease.

I hope that you can find the time to present your perspective on this issue to the

policy community, say in the form of an article for Public Interest. This would be an interesting opportunity to bring your ideas about post-Cold War conversion to a specific problem of great importance to the national interest.

With best regards,

Yours sincerely,

DALE W. JORGENSON.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I am always happy to yield to the senior Senator from New York, because I always enjoy hearing what he has to say.

Mr. President, the importance of intelligence gathering for our Nation is at a critical juncture. Never has it been as important as it is today that we have foreign intelligence gathering capabilities, particularly because we are now facing a time when weapons of mass destruction, nuclear, chemical and biological, are being made in different parts of the world. Even worse, the weapons that transport those weapons are also being developed in different parts of the world. There is an urgent need for us to know where those weapons are and where the capabilities are to transport those weapons, either within their own theater or over to our country.

So, there is no question in my mind that we must have a strong foreign intelligence gathering capability. We also have a problem. That is we need a leader and we need a focus and we need a mission for the people who are in our intelligence gathering operations right now. We have had several mishaps. The Aldrich Ames case is one that has been talked about on this floor and it is one that is very troubling to us, even today. Many people feel this traitor was not dealt with in a way that will show there is an accountability when a drastic mistake happens.

The lack of management accountability did demonstrate, by recent events in Guatemala, the lack of information that the oversight committees had about the situation in Guatemala. The escalation of terrorism all over the world is causing an ongoing need for us to have intelligence-gathering capabilities.

So, we do need a person who can take control of our central intelligence-gathering operation, lift the morale of the wonderful people who work there, and put an accountability into the system. We also need someone who can make it more efficient. As we are downsizing our budget we need to make sure that we have a mission, that we are using our assets in the most efficient way.

So we need someone to come in and show that leadership. I believe John Deutch is that person. I think the President has made a good decision.

There are some issues that must be dealt with. First, I must say I disagree with the President giving Cabinet rank to the Director of Central Intelligence. The National Security Act of 1947 sets forth the members of the National Security Council and then designates others, including the Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff, as officials who are not members but may attend and participate as the President directs. I believe that is also the appropriate role for the DCI with respect to the Cabinet.

Mr. Deutch was asked these questions in our Intelligence Committee hearing on his nomination regarding the Cabinet status of the Director of Central Intelligence. He assured the committee that he would hold to the proper standard of conduct and that he would not allow policy to influence intelligence judgments and not allow intelligence to interfere in the policy process.

That is a very important distinction that the new Director has adopted and which I think is very important for us to keep—the separation between intelligence gathering and policymaking. The committee is going to be sensitive to any indication that this standard is not being met, but I believe the make-up of the Cabinet is the responsibility of the President. That is not within our mission in confirmation. And, therefore, I hope the standards that we have discussed will be adhered to, both by the President and by the new Director of Central Intelligence.

I brought up two major issues in committee that I thought were important. First, a closer working relationship with the oversight committees in Congress, the Intelligence Committee in the Senate, and the one in the House. I think it is most important when you have a covert operation which, of course, intelligence gathering is, to have an even more strong relationship and communications network with the oversight committees that can assess the judgments that are being made in these covert operations.

It is good for Congress and it is good for the intelligence gathering, as well. It is very important that we have an oversight and we have the ability to make judgments by the duly elected officials in the U.S. Congress when we are dealing with such sensitive intelligence matters.

So I talked to the new Director-designate about that. And he agreed totally that we needed to have that line of communication, and I think it has been reiterated by every person who has spoken on the floor today, and most certainly every member of the committee.

The second issue that was very important to me was complete financial disclosure of every person who works at the CIA and every contractor who is working on CIA projects. I felt this was important because one of the obvious things that was missed in the Aldrich Ames case was a high-living lifestyle by Aldrich Ames and his family, clearly one that could not be shown to have been supported by a person on the salary of Aldrich Ames.

If we had the vehicle in place to have total financial disclosure, the CIA could immediately have begun to check on this lifestyle to see if there was something that was not right. Clearly, it was not right the way Aldrich Ames was living. And we found out later it was because he was receiving millions of dollars from the Russian Government for secrets that he was giving to them from our CIA. So we need the basic information.

Mr. Deutch said, and promised, that he would make sure that every person who works for the CIA, who willingly comes to work for the CIA, will give basic financial disclosures. I think that is going to be a very important tool for us to show that there is an accountability in the CIA and that an Aldridge Ames case will not as easily be repeated and, if it is repeated, that we will have the ability to go in immediately and see what the assets are that have been disclosed and if something seems to be amiss.

So these are two areas that I am satisfied that Mr. Deutch is going to address, and he has already given me his word that there is going to be financial disclosure among the CIA employees and people who are working for the CIA under contract.

So in conclusion, Mr. President, I support Secretary Deutch for the role of Director of Central Intelligence. This is one of the most important nominations that we will have before us this year, because this agency needs such direction. I believe Mr. Deutch can provide that direction. I have worked with him as a member of the Armed Services Committee in his capacity as Deputy Secretary of Defense. I find him to be a person of integrity. I respect his judgment, and I think he did a fine job as Deputy Secretary of Defense. I think he is the person to fulfill this mission at this very important time in our intelligence gathering reorganization.

I think we must take our responsibility in confirming him, to do this in a swift and timely manner. We have had five DCI's in the last 10 years. This agency needs leadership. We need some reorganization. We need a mission, and we need to make sure that we are using our assets efficiently and well so that everyone in our country is secure so that we have the information that we need to keep that freedom, independence, and liberty that we have.

So I am supporting Mr. Deutch for this very purpose. I wish him well. It is going to be a very tough job. I hope that he will work with Members of Congress who want him to succeed, and we do. For all of our country, we must succeed with this new Director.

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

Mr. KERRY. Mr. President, I am pleased to join my colleagues today to urge confirmation of John Deutch as Director of Central Intelligence. As a permanent resident of Belmont, MA, and having a lifelong involvement in

the Massachusetts community, John Deutch is a neighbor and a man who has built a national and international reputation as a leader and as a forceful and effective professional. I described him publicly, not long ago, as ''superb and first rate'', and I reiterate that description today, without hesitation and with renewed respect and continued confidence in his extraordinary ability.

Let me add a few words about the task he will face and the talent he will bring to the position of Director of Central Intelligence. The world is undoubtedly changing. It will continue to change more quickly, perhaps, than at any other time in our history. We are seeing old threats and new threats emerge in a shifting political and economic atmosphere that will test our resolve and challenge our leadership.

Mr. President, John Deutch is undoubtedly up to the challenge, and he is a leader for his time. There is no question about that. He understands the critical task that he will face, and the importance of facing it with resolve, strength, and a firm hand. He has proven that he knows the need and has the expertise to address what we all acknowledge are operational and administrative problems at the CIA. As Director of Central Intelligence he will face two daunting managerial tasks: First, he must try to restructure the U.S. intelligence community at a time when many believe there is no longer a need—nor the funds—for the level of intelligence activity to which we became accustomed during the cold war. He will have to balance proper and appropriate intelligence activity with increasing congressional and public scrutiny of scarcer and scarcer tax dollars.

Second, in the wake of recent events at the CIA, he will have to look critically at internal operations and move quickly to rebuild morale, public trust, and confidence while maintaining the integrity of America's intelligence capability. As far as restructuring the intelligence community, I believe John Deutch has one very important advantage over many who could have been chosen to serve. He is not an architect of either the current intelligence system or the processes that have been put into place. He is a fresh face, a new voice, a real leader with the talent and the foresight to succeed.

Now, as far as what Secretary Deutch will face at the CIA, operationally and administratively, there is a need to act expeditiously to turn things around even if it means significant personnel changes, and I am confident that John Deutch has the necessary judgment and will to quickly act in the best interest of the Agency and the Nation.

Mr. President, the American intelligence community will be well served by the experience and leadership of John Deutch who rightfully observed in his statement to the Intelligence Committee that ''changing intelligence priorities, as well as intelligence failures, dictate that we carefully re-examine the need for, and specific missions of, intelligence.'' He added that he sees ''four significant dangers to our national security and the social and economic well-being of our citizens.'' He cites major regional conflicts; the spread of weapons of mass destruction; international terrorism, crime, and drug trafficking; and the present nuclear danger that still exists in Russia and the Russian republics as they move toward democracy.

I also see the new Director of Central Intelligence moving, as he said he would, to improve the support that the intelligence community gives to law enforcement agencies in areas of narcotics trafficking, international crime, and terrorism. I agree with his assessments and I am confident he will move expeditiously to address the continuing threat of the proliferation of weapons of mass destruction, and particularly the emerging threat of terrorist attacks with these weapons. I see the new Director re-defining and establishing new standards for the proper role for the intelligence community in the areas of economic intelligence, and addressing the issue of making information, when appropriate, more readily available by lowering classifications or through declassification. And I see the new Director, like every other director of a Federal agency, looking for ways to economize and streamline the operations at CIA to give us more for our tax dollars.

From all we've heard about John Deutch, I believe he has the experience, the expertise, the professionalism, the reputation, the perseverance, the qualifications and the integrity to do the job, and I urge my colleagues to confirm his nomination.

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

THE NOMINATION OF JOHN DEUTCH TO BE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. ROBB. Mr. President, I would like to add my voice in support of the nomination of Dr. John Deutch to be Director of Central Intelligence. This nomination is extremely important, Mr. President, because the Central Intelligence Agency is at a crossroads and I believe John Deutch has what its going to take to redirect the Agency's course during its next few crucial years.

There is no question that strong leadership is critical for the CIA to be able to transform the Agency's mission into one that provides policymakers with timely, useful, and target-specific intelligence. CNN can cover the world; the CIA needs to bring greater attention and resources to bear on countries and issues that represent a threat to our national security interests.

Dr. Deutch was brutally frank in his assessment of CIA successes and failures, and refreshingly candid about what he would like to accomplish as DCI. His candor was unusual, since nominees normally go out of their way to avoid categorical statements about agendas and work plans. Dr. Deutch, in contrast, went out of his way to explain exactly where he is headed and what he would like to do.

During his confirmation hearing, I heard Dr. Deutch speak of bringing in a new generation of leaders at the CIA, streamlining imagery operations, and getting to the root of problems inside the Operations Directorate.

Mr. President, John Deutch brings with him a demonstrated track record of achievement in both government and academia. He is widely respected within the defense community for his performance as Secretary Perry's deputy at the Pentagon and within the scientific community for his tenure at the Massachusetts Institute of Technology. I believe he is more than equal to the task of restoring luster to the CIA.

As a member of the Armed Services Committee, I have worked with John Deutch, and I have seen firsthand the quality of his work and his conscientious commitment to our national defense and to the men and women who serve our country.

Finally, Mr. President, as a Senator from Virginia, I'm pleased that Dr. Deutch understands the distress of talented Agency personnel and alumni who have watched the CIA and other intelligence branches endure a rough patch. He is, in my judgment, the right man at the right time to restore dignity and respect to deserving and hardworking public servants working in the Intelligence Community.

Mr. President, I have high hopes for Dr. Deutch's tenure at the CIA, and I urge my colleagues to support his nomination.

Mr. President, I yield the floor.

NOMINATION OF JOHN M. DEUTCH TO BE THE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. NUNN. Mr. President, I am pleased to support the nomination of John M. Deutch to be the Director of Central Intelligence. The nomination of Dr. Deutch, who presently serves as the Deputy Secretary of Defense, has received the unanimous, bipartisan support of the Senate Select Committee on Intelligence. This strong support reflects Dr. Deutch's outstanding qualifications, including his first-rate performance as Deputy Secretary of Defense and Under Secretary of Defense for Acquisition.

I have had the opportunity to work closely with Secretary Deutch, both in my prior capacity as chairman of the Armed Services Committee and in my current role as ranking minority member. He has made an outstanding contribution at the Department of Defense, and is well-qualified to serve as the Director of Central Intelligence.

Secretary Deutch came to the Department of Defense following a long and distinguished academic and government career. His positions in academia included service as provost and institute professor at the Massachusetts Institute of Technology. His prior Government experience included service on the staff of the Office of the Secretary of Defense during the early

1960's, and as Under Secretary of Energy during the late 1970's. In addition, he served on the Defense Science Board and on many other advisory boards over the years.

In 1993, he was nominated by President Clinton and confirmed by the Senate to serve as the Under Secretary of Defense for Acquisition. When Bill Perry became the Secretary of Defense in 1994, Dr. Deutch was nominated and confirmed to his current position as Deputy Secretary of Defense.

I have known Secretary Deutch personally for many years, including the periods of his service in the Department of Energy and during his tenure at MIT. His entire career—both in academia and in Government service—has been devoted to developing creative and thoughtful approaches to national defense and intelligence policy issues.

Secretary Deutch has compiled as solid record in the Department of Defense as a strong manager. He has served the Nation well, not only in the management of internal Department of Defense functions, but also as the DOD official with primary responsibility for interface with the intelligence community. He knows how to solve problems, make clear decisions, and address pressing issues. On the Armed Services Committee, we have appreciated his breadth of knowledge, his candor, and his willingness to engage in dialog. He also has a good sense of humor, which he uses to put difficult issues in perspective—a quality that will be most useful in his new position.

The intelligence community faces many difficult challenges in the post-cold war era, particularly in the aftermath of the Ames espionage matter. The Oklahoma City tragedy underscores the dangers of terrorism in the modern world. The tensions in the Persian Gulf and North Asia, as well as the problems faced by the States of the former Soviet Union, are but a few of the difficult challenges facing the intelligence community. John Deutch has the experience and background to take on these challenges. I strongly urge the Senate to confirm his nomination to be Director of Central Intelligence.

Mr. KERREY addressed the Chair.

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

Mr. KERREY. Mr. President, there are, to my knowledge, no other Senators who wish to speak on this nomination. I will offer a couple of closing comments and then yield time, alerting colleagues who are watching of the possibility that we may be yielding back, and they have not told us they wanted to speak. They could rush over here and say a few words.

In my statement, I indicated, and it is correct, that one of the problems we have with our intelligence effort is that as a consequence of needing to protect security, we are unable—the intelligence people are unable—to brag about successes, and thus not only is it difficult for us to give credit, but increasingly citizens are needing and asking for information that will enable them to judge whether or not their tax dollars are being well spent. I would argue that this condition of being unable to disclose sometimes puts us in a position of not being able to give citizens information or having them say, ''Now I understand why we are doing this, and I believe we are in fact getting our money's worth.''

I would like as a consequence to identify for citizens two recent events that were publicly disclosed. And for the information of citizens, it is the President of the United States who has the controlling authority both to make a classification decision and to make a declassification decision. That decision is spelled out in statute. It is not a decision that can be made by either the Congress, in the absence of changing the law, or an individual Member of Congress. But two recent disclosures, probably, I suspect, disclosed by a decision made by the President to make the disclosure, underscore the importance of this intelligence effort.

The first was that the United States of America presented to the U.N. Security Council clear and present evidence that North Koreans were engaged in a policy, a strategy, an active effort to acquire nuclear capacity. We could say that they were, and people did or did not believe it. They mostly said, ''Well, maybe that is just the United States just sort of hung up again.'' Because we had the intelligence capacity, we presented information—in this case, images—to the Security Council, and the Security Council sees clearly North Korea is building nuclear capability and the Security Council takes actions supportive of the United States' effort to make certain that North Korea does not become a nuclear nation.

Again, with the use of images disclosed to the public, our Ambassador to the United Nations, Madeleine Albright, at the direction of the President of the United States, at the time when the French and the Russians were weakening in their resolve in regard to sanctions on Iraq, buying into the Iraqis' assertions that, ''We are impoverished now; we don't have very much money; and, no, we are not building any chemical or biological chemical capability, and we are not really a militaristic nation. You need not worry about us any longer.''

Our Ambassador presents, in a week-long trip to I think 10 or 12 nations, again, images that are our intelligence images to these world leaders on the Security Council, information clearly indicating that the Iraqi leader had built a $1.2 billion palace, hardly the sort of action taken by a nation that was impoverished; second, that chemical and biological capability continued to be a problem; and that the acquisition of Kuwaiti military equipment during their occupation of Kuwait was being integrated into the Iraqi forces, giving lie to all three of the statements made by the Iraqi leader and giving the United States the capacity, the President the capacity, through his United Nations, our U.N. Ambassador, the ability to make the argument to keep the sanctions still tightening around the nation of Iraq.

In both cases, the United States of America received benefit. Who knows what the cost to the world would have been had North Korea been permitted to continue building its nuclear capability or had the sanctions been dropped from Iraq, a nation that continues to exhibit dangerous tendencies, indeed dangerous actions.

I cite those two amongst the latest that have been disclosed publicly because citizens deserve to get enough information upon which they can make a decision about whether or not we are either sort of captive to the intelligence community, as is very often suspected by many who are not on this Intelligence Committee, and perhaps other citizens as well, that we in fact are looking at these successes, insisting upon accountability, trying to assess the threats in the world and organize our intelligence efforts to meet those threats, to maintain the capability to keep the United States of America as safe as is humanly possible.

Let me, in addition, Mr. President, point out that there are two things Mr. Deutch is going to be addressing which in some ways are a consequence of both our successes and at times our failures of the past.

The first is, many of the threats that we are now dealing with are threats that are a consequence, sort of a residual, of the cold war. The proliferation threat on the nuclear, biological, and chemical is a threat that came as a consequence of our building capacity and the Soviets' building capacity. This proliferation threat is a very real threat, and we are having to now take the sort of residual problem of the cold war and move it to the top of the list knowing that the bombing in Oklahoma City would be magnified several thousand times over were either chemical, biological, or nuclear weapons to be used in a terrorist effort.

This is a very real and present problem. It requires the United States of America to lead. No other nation is going to do it. We saw recently, when the President put sanctions on Iran, our friends in Europe said, ''Well, we think that's a bad idea. We want to continue to engage with a country that's involved with terrorism.''

I do not know what they are going to do; I suspect wait until something terrible were to happen. Only the United States of America can lead on that issue, lead trying to get Russia not to sell nuclear technology to Iran. Only the United States of America, I believe, is willing to make the kind of diplomatic and financial effort necessary to make this world safe in the area of nuclear, chemical, and biological weapons and the terrorism that comes from that.

There is a second problem, Mr. President, that our new, hopefully new Director of Central Intelligence is going to have to be dealing with. The distinguished Senator from New York in his comments referenced that, and that is not just a cynicism toward Government but a precise suspicion that the CIA is involved in all sorts of things that are bad. That the CIA is possibly responsible for the assassination of John Kennedy is something that is actually honestly believed by some Americans who see a conspiracy in which the Central Intelligence Agency perhaps played some central role.

We are going to have to face an awful lot of that, Mr. President, and we are going to have to face it very squarely and very honestly. As I said earlier, I am very excited watching the accounts of the celebration of the victory in Europe 50 years ago, watching old men recall the stories of bravery and heroism and sacrifice. I say, with no interest in disparaging that success—I thrilled in that success and am unable to measure truly the sacrifice and heroic behavior that was necessary, but it stands in stark contrast to an event that occurred, oh, I guess about a month or so ago when former Secretary of Defense McNamara published a mea culpa book saying that in 1966 the Secretary of Defense of the United States of America, with all the intelligence effort at its disposal, had actually concluded that the war in Vietnam was unwinable.

Well, I was there in 1969. I do not remember McNamara saying anything about it then. And that kind of a statement is the example of the sort of thing, unfortunately, that feeds this cynicism and this conspiracy theory and causes people to say that the Government really is against rather than trying to be on their side in making their lives not only safe but their lives secure as well. It means that we are going to have to press the envelope a bit on secrecy. By that I mean we are going to have to take great care that a secret is, indeed, necessary to protect the American people rather than protecting those who are operating, either the Director of Operations or other sorts of entities. It cannot be that we keep a secret from the American people because we are afraid of what they will do to us if we tell them the truth. It must be that a secret is being maintained because we are concerned about our inability to carry out an important security mission if full disclosure were to occur.

As I indicated, there is a tremendous capacity in the intelligence community to help citizens in a very difficult time acquire the information needed to become informed. When you are born in the United States of America, you are given enormous freedoms at birth and should have been told at some point during your public education or upbringing by your parents or upbringing by others, you should have been told that freedom is not free; that a contribution has to be made back of some kind. And our citizens are increasingly aware of the contribution of time and effort that they have to make to become informed about what is going on in Chechnya, what is going on in the former Yugoslavia, what is going on in Mexico, what is going on in places where they have a difficult time pronouncing the name let alone making decisions about what our foreign policy ought to be. I believe the technologies that we have at our disposal, if we press the envelope judiciously and not in a reckless fashion, can, indeed, help our citizens make decisions and make it more likely that government of, by, and for the people works both in foreign as well as domestic policy.

Mr. President, no one has traipsed over to the floor to provide additional testimony, and I am prepared to yield back what time is remaining and yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. We will also yield back our time, and I will go forward and close.

REMOVAL OF INJUNCTION OF SECRECY

Mrs. HUTCHISON. I ask unanimous consent that the Injunction of Secrecy be removed from the extradition treaty with Hungary (Treaty Document No. 104–5), transmitted to the Senate by the President today; and the treaty considered as having been read the first time; referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and ordered that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of Hungary on Extradition, signed at Budapest on December 1, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Treaty is designed to update and standardize the conditions and procedures for extradition between the United States and Hungary. Most significantly, it substitutes a dual-criminality clause for the current list of extraditable offenses, thereby expanding the number of crimes for which extradition can be granted. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The Treaty further represents an important step in combating terrorism by excluding from the scope of the political offense exception serious offenses typically committed by terrorists, e.g., crimes against a Head of State or first family member of either Party, aircraft hijacking, aircraft sabotage, crimes against internationally protected persons, including diplomats, hostage-taking, narcotics-trafficking, and other offenses for which the United States and Hungary have an obligation to extradite or submit to prosecution by reason of a multilateral treaty, convention, or other international agreement. The United States and Hungary also agree to exclude from the political offense exception major common crimes, such as murder, kidnapping, and placing or using explosive devices.

The provisions in this Treaty follow generally the form and content or extradition treaties recently concluded by the United States. Upon entry into force, it will supersede the Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases Between the Government of the United States of America and the Austro-Hungarian Empire, signed at Washington, July 3, 1856, with certain exceptions.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 8, 1995.*

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mrs. HUTCHISON. As in executive session, I ask unanimous consent that the Senate immediately proceed to the consideration of the following nominations on the Executive Calendar en bloc: calendar Nos. 107, 108, 109, 110, 111, and 112; further, that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table en bloc; that any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Maxine M. Chesney, of California, to be United States District Judge for the Northern District of California.

Eldon E. Fallon, of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

Curtis L. Collier, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Joseph Robert Goodwin, of West Virginia, to be United States District Judge for the Southern District of West Virginia.

DEPARTMENT OF JUSTICE

Joe Bradley Pigott, of Mississippi, to be United States Attorney for the Southern District of Mississippi for the term of four years.

UNITED STATES INSTITUTE OF PEACE

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.

LEGISLATIVE SESSION

Mrs. HUTCHISON. What is the pending business, Mr. President?

The PRESIDING OFFICER. The Senate will now return to legislative session.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending business is H.R. 956.

CLOTURE MOTION

Mrs. HUTCHISON. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the Coverdell substitute amendment to H.R. 956, the product liability bill.

Bob Dole, Slade Gorton, Pete Domenici, Frank Murkowski, Spencer Abraham, Trent Lott, Kay Hutchison, Chuck Grassley, Rick Santorum, Jay Rockefeller, Larry Pressler, Larry Craig, Don Nickles, Conrad Burns, Christopher Bond, Bill Frist.

MORNING BUSINESS

Mr. NICKLES. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

The Senator from Nebraska.

RECOGNITION AND COMMENDATION OF THE LAKOTA AND DAKOTA CODE TALKERS

Mr. KERREY. I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 116, a resolution to recognize and commend the Lakota and Dakota code talkers submitted earlier today by Senator DASCHLE and Senator PRESSLER.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 116) recognizing and commending the Lakota and Dakota Code Talkers.

The Senate proceeded to consider the resolution.

Mrs. HUTCHISON. I ask unanimous consent that the resolution and preamble be agreed to en bloc, and the motion to reconsider be laid on the table; that any statements appear in the RECORD as if read.

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

Mr. DASCHLE. Mr. President, today, as we celebrate the 50th anniversary of V–E Day, I am proud to submit a resolution honoring a special group of World War II veterans, the code talkers of the Lakota and Dakota tribes.

In the early days of World War II, American radio codes were continually being broken by Japanese cryptographers, placing American lives at great risk.

That changed with the code talkers, who used their native American Indian languages to communicate and relay critical communications. It was a code the Japanese could not decipher.

The heroic efforts of the Lakota and Dakota code talkers saved many lives. And it was just one of the many ways in which native Americans served their Nation with great honor and distinction and valor during World War II.

On December 1941, there were approximately 5,000 American Indians in the armed service. By the end of the war, more than 44,500 American Indians served in uniform. Indeed, more than 10 percent of all native Americans, alive at the time served in World War II.

In 1982, Congress and a Presidential proclamation recognized the heroic contributions of the Navajo code talkers and their communication efforts during World War II. Today, let us also recognize the patriotic efforts of the Lakota code talkers who served in the same line of duty.

And let us say to them ''pilamayapelo,'' thank you.

I yield the floor.

So the resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 116), with its premable, is as follows:

S. RES. 116

Whereas the Lakota and Dakota Code Talkers, Native Americans who were members of the Sioux Nation, worked in radio communications during World War II and used their Lakota and Dakota languages to relay communications;

Whereas Japanese cryptologists never deciphered the Native American languages that were used as codes during World War II, including the Lakota and Dakota languages; and

Whereas the Lakota an Dakota Code Talkers deserve to be recognized for their contribution to the successful resolution of the war effort in the Pacific: Now, therefore, be it

Resolved, That the Senate recognizes and commends the Lakota and Dakota Code Talkers for their invaluable contribution to the successful resolution of World War II.

A SALUTE TO GLEN LEE FOR HIS 33-YEAR CAREER

Mr. HELMS. Mr. President, B. Glen Lee retired the other day, and just about everybody who ever had dealings with the gentleman will testify that for 33 years he was a worthy public servant—which is just about the best monument to any public servant.

Glen Lee is indeed admired by his fellow citizens. It was Hawthorne who asserted years ago that nobody who needs a monument ever ought to have one.

Glen Lee does not need a monument, but he deserves the one he has.

Mr. President, B. Glen Lee's career was devoted to his diligent work with and for the U.S. Department of Agriculture. He was Deputy Administrator of the USDA's Plant Protection and Quarantine Program—a part of the Department's Health Inspection Service. In that capacity, Mr. Lee served so well that last year he was 1 of 6 winners of the 1994 Executive Excellence Award presented by the Professional Development League.

And, Mr. President, in that connection he was singled out for praise for having persuaded the Peoples' Republic of China to allow the entry of United States apples and other produce.

Glen Lee was graduated from N.C. State University in 1962 and began his career as an inspector in the Plant Pest Control Division of the Ag Research Division in North Carolina. His retirement rolled around while he was serving as the top plant protection official in the United States.

He served the American people well.

THE MOSCOW SUMMIT

Mr. BIDEN. Mr. President, I rise today to praise President Clinton for his determination to push forward our national agenda with the Russians at this week's summit in Moscow.

It is no secret that recently several items of dispute have arisen to cloud the relationship between Russia and the United States. In response, there have been scattered voices calling on the President to cancel his trip.

Mr. President, such a course would have been a profound mistake, and I am gratified that our President had the wisdom and maturity to stay the course. Russia, both in spite of and because of her current difficulties, remains fundamentally important to this country. We must remain engaged with the world's other major nuclear power and continue to strive to bring her into a European security system of democratic countries.

Moreover, British Prime Minister Major, German Chancellor Kohl, and French President Mitterrand all will be attending the ceremonies marking the 50th anniversary of the end of World War II and honoring the heroic sacrifices that the Russian people made in the victorious struggle against nazism. In that context it is unthinkable that

the President of the United States would be absent.

But President Clinton's attendance at the Moscow summit in no way signals tacit approval of Russia's brutal behavior in Chechnya. On the contrary, President Clinton will make clear, as he has done in the past, that while we support the territorial integrity of the Russian Federation, we strongly condemn Russian attacks on civilians in Chechnya. The President will, I trust, also call on President Yeltsin to extend the current cease-fire in Chechnya and make it permanent.

Mr. President, another area of profound difference with the Kremlin is the proposed sale of a Russian nuclear powerplant and delivery of nuclear technology and training to Iran. Even though, legally speaking, Moscow is correct that its proposed sale falls within international guidelines, I am convinced that Iran has embarked upon a program to build nuclear weapons and, hence, that the sale would be a reckless and counter productive act.

Although it is highly unlikely at this point that Russia can be made to back down totally, President Clinton—on site, face-to-face with President Yeltsin—will be able to press for important adjustments such as preventing the sale of a gas centrifuge plant, which would significantly increase the danger of Iran's being able to produce weapons-grade enriched uranium. Also, the President may push for an agreement whereby spent nuclear fuel would be returned from Iran to Russia.

I have been dismayed at recent bellicose statements by Senior Russian officials against NATO expansion. In Moscow, President Clinton will make crystal-clear to President Yeltsin that Russia does not have veto power over any actions of NATO, including the alliance's enlargement.

In addition, President Clinton will reiterate that NATO has always been a defensive alliance and that binding qualified Central and East European democracies into the alliance's comprehensive security system will enhance stability in the region and thereby be a gain, not a danger, for Russia. The President might pose the rhetorical question to Yeltsin whether Russia would prefer that there be potential isolated loose cannon countries in the middle of Europe or fully integrated members of a defensive alliance led by the United States. The answer is surely the latter.

In Moscow, President Clinton will be able to urge President Yeltsin to sign Russia up formally as a member of the Partnership for Peace so that it can participate on an ongoing basis in a range of discussions with NATO.

There are other crucially important outstanding issues to discuss with the Russians at the Moscow summit. President Clinton will undoubtedly urge that Russia continue its budget austerity and privatization programs and other economic reforms.

Several arms control issues will certainly be on the agenda, including prospects for ratification of START II, crafting a joint strategy in support of the indefinite extension of the Nuclear Nonproliferation Treaty, demarcation between antiballistic missiles and tactical missile defense, and holding to the terms of the Conventional Forces in Europe Treaty.

President Clinton will, I am certain, explain in Moscow that cooperation on the issues I have enumerated would strengthen Russia's case for membership in important international bodies such as the Group of Seven Advanced Industrial Nations.

On the other hand, threatening to curtail economic and technical assistance to Russia because of disagreements with Russian policy, as some in the majority party in Congress have advocated, would be ''shooting ourselves in the foot,'' since such a move could only serve to harm the transitions to a free-market economy and true political democracy in Russia that are very much in the United States national interest.

Mr. President, the way to move forward in our emerging relationship with the new Russia is not to sit pouting on the sidelines. Rather, it is to engage the Russians in open, frank, even contentious dialog.

Americans can be proud that we have a President thoroughly versed in all these highly complex matters and able to bring the full weight of the Presidency to bear in face-to-face negotiations.

I know that all Americans join me in wishing President Clinton every success in his vitally important mission.

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–876. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report relative to obligations incurred in FY 1994 by US military obligations in Haiti; to the Committee on Appropriations.

EC–877. A communication from the Under Secretary of Defense (Acquisition and Technology), transmitting, pursuant to law, a report relative to the Foreign Comparative Testing Program for fiscal year 1994; to the Committee on Armed Services.

EC–878. A communication from the Chairwoman of the Strategic Environmental Research and Development Program Council, transmitting, pursuant to law, the Scientific Advisory Board's annual report for fiscal year 1994; to the Committee on Armed Services.

EC–879. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to the Department's responses to recommendations of the Defense Nuclear Facilities Safety Board for calendar year 1995; to the Committee on Armed Services.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. INOUYE:

S. 763. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Evening Star*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GLENN:

S. 764. A bill to amend the Indian Child Welfare Act of 1978 to require that determinations concerning the status of a child as an Indian child be prospective the child's date of birth, and that determinations of membership status in an Indian tribe be based on the minority status of a member or written consent of an initial member over the age of 18, and for other purposes; to the Committee on Indian Affairs.

By Mr. MCCAIN:

S. 765. A bill to amend the Public Buildings Act of 1959 to require the Administrator of General Services to prioritize construction and alteration projects in accordance with merit-based needs criteria, and for other purposes; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. INOUYE, Mr. THURMOND, Mr. HEFLIN, Mr. STEVENS, Mr. GORTON, Mr. WARNER, Mr. BUMPERS, Mr. CHAFEE, Mr. PELL, Mr. HATFIELD, Mr. GLENN, Mr. ROTH, Mr. HELMS, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. EXON, Mr. AKAKA, Mr. FORD, Mr. HOLLINGS, Mr. DASCHLE, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BAUCUS, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BURNS, Mr. BYRD, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. FAIRCLOTH, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRIST, Mr. GRAHAM, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mr. HARKIN, Mr. HATCH,

Mrs. HUTCHISON, Mr. INHOFE, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KENNEDY, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mrs. MURRAY, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PRESSLER, Mr. PRYOR, Mr. REID, Mr. ROBB, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SARBANES, Mr. SHELBY, Mr. SIMON, Mr. SIMPSON, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. THOMAS, Mr. THOMPSON, and Mr. WELLSTONE):

S. Res. 115. A resolution expressing the sense of the Senate that America's World War II veterans and their families are deserving of this nation's respect and appreciation on the 50th anniversary of V–E Day; considered and agreed to.

By Mr. DASCHLE (for himself and Mr. PRESSLER):

S. Res. 116. A resolution recognizing and commending the Lakota and Dakota Code Talkers; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE:

S. 763. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Evening Star,* and for other purposes; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION FOR THE VESSEL ''EVENING STAR''

Mr. INOUYE. Mr. President, this private relief bill that I am introducing would authorize a certificate of documentation and coastwise trade endorsement for the vessel *Evening Star,* a small boat to be used for interisland charters. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 763

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

SECTION 1. CERTIFICATE OF DOCUMENTATION.

Notwithstanding sections 12106 through 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of Transportation may issue a certificate of documentation and coastwise trade endorsement for the vessel EVENING STAR, hull identification number HA2833700774, and State of Hawaii registration number HA8337D.

By Mr. GLENN:

S. 764. A bill to amend the Indian Child Welfare Act of 1978 to require that determinations concerning the status of a child as an Indian child be prospective the child's date of birth, and that determinations of membership status in an Indian tribe be based on the minority status of a member or written consent of an initial member over the age of 18, and for other purposes; to the Committee on Indian Affairs.

INDIAN CHILD WELFARE IMPROVEMENT ACT

Mr. GLENN. Mr. President, I rise today to introduce the Indian Child Welfare Improvement Act of 1995. Representative DEBORAH PRYCE has introduced companion legislation in the House. The purpose of this bill is to clarify the definition of ''Indian child'' in the Indian Child Welfare Act of 1978.

Mr. President, I rise today to introduce the Indian Child Welfare Improvement Act of 1995. Representative DEBORAH PRYCE has introduced companion legislation in the House. The purpose of this bill is to clarify the definition of ''Indian child'' in the Indian Child Welfare Act of 1978.

Mr. President, this legislation is a direct response to a situation involving a family in Ohio. The Rost family of Columbus, OH received custody of twin baby girls in the State of California in November 1993, following the voluntary relinquishment of parental rights by both birth parents. The biological father did not disclose his native American heritage in response to a specific question on the relinquishment document. In February 1994, the birth father informed his mother of the pending adoption. Two months later in April 1994, the birth father's mother enrolled herself, the birth father and the twin girls with the Pomo Indian Tribe in California. The adoption agency was then notified that the twins may be eligible for tribal membership, and that the adoption could not be finalized without a determination of the applicability of the Indian Child Welfare Act.

The bill I am introducing today clarifies existing law. The definition of Indian child in my bill would limit the applicability of the Indian Child Welfare Act to those living on a reservation and their children, and those who are members of an Indian tribe. In addition, the bill would stipulate that for the purpose of a child custody proceeding involving an Indian child, membership in an Indian tribe is effective from the actual date of admission in the Indian tribe and cannot be applied retroactively.

To do otherwise, Mr. President, is not acting in the best interests of the adopted children, and that is my principal concern—the interests of the children.

Mr. President, I believe that this bill does not in any way weaken or compromise current law or protections extended to Native American children and families. The Indian Child Welfare Act was enacted to provide safeguards or standards with respect to State court proceedings involving Indian child custody matters, in an effort to curb involuntary separation of Indian children from their Indian families, heritage, and culture. These objectives and protections are not threatened by the bill I am introducing.

Mr. President, the Rost family is now facing a very difficult situation. This bill and the one introduced by Representative PRYCE will clarify the Indian Child Welfare Act, and I urge its passage by the Senate.

By Mr. MCCAIN:

S. 765. A bill to amend the Public Buildings Act of 1959 to require the Administrator of General Services to prioritize construction and alteration projects in accordance with merit-based needs criteria, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL BUILDINGS CONSTRUCTION AND ALTERATION FUNDING IMPROVEMENT ACT

Mr. MCCAIN. Mr. President, today I'm introducing legislation to help ensure that funding for the construction and repair of Federal buildings is allocated according to need and priority.

First, the bill would require the President to submit the administration's building construction budget request in the form of a prioritized list of projects. Second, and most importantly, the bill would require the General Services Administration to prepare and maintain a ranked priority list of all ongoing and proposed construction projects. The list would be updated and reprioritized with each new project added either through administrative or congressional action.

Last year, the U.S. Government spent nearly $400 million on Federal building construction and repair. That is an enormous sum of money. Clearly, the Federal building construction program can and must share in the sacrifice as we seek to gain control over the deficit.

As we rein in spending, it's more critical now than ever to ensure that scarce financial resources are allocated to our highest priorities.

In order to trim the fat in an informed and efficient manner Congress, the administration and the taxpaying public must know what our construction priorities are.

Earlier this year, during debate on the rescission bill, the Senate considered proposals to cut Federal construction funding. The list of projects proposed for defunding was rather arbitrary and capricious. The tenets of good government dictate that when we reduce spending, our lowest priorities should be put on the chopping block first. Yet, Congress can not readily determine what those priorities are. By requiring the General Services Administration, which administers the Federal building fund, to maintain a ranked list of project priorities, we can be sure that funding decisions will be made on the basis of merit rather than politics or congressional caprice.

Mr. President, foremost, this amendment will help us address the pork barrel politics which has played far too great a role in the process of Federal building construction. Currently, when a member decides a new building is needed in his or her State or district, the General Services Administration conducts what's known as an 11b survey to determine the need. In most cases, the GSA determines that a need

exists. The study is then used to justify project authorization and appropriation, even though a finding of need is not a finding that such a project is a priority.

As projects that are not in the President's budget request are added by Congress we do not always have a clear idea of where they are ranked among competing priorities. Passage of this legislation will ensure that this vital information is readily available.

I hope that the relevant committees will expeditiously examine this proposal in the hope that we can approve rapidly this relatively minor but I believe important and helpful change in procedure.

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. ROTH, the names of the Senator from New York [Mr. D'AMATO], the Senator from Kansas [Mr. DOLE], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Pennsylvania [Mr. SANTORUM], the Senator from Mississippi [Mr. LOTT], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Wyoming [Mr. SIMPSON], the Senator from Maine [Ms. SNOWE], the Senator from Michigan [Mr. ABRAHAM], the Senator from California [Mrs. FEINSTEIN], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 254

At the request of Mr. LOTT, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 254, A bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 343

At the request of Mr. DOLE, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 343, a bill to reform the regulatory process, and for other purposes.

S. 351

At the request of Mr. HATCH, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 426

At the request of Mr. SARBANES, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 426, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, and for other purposes.

S. 457

At the request of Mr. SIMON, the name of the Senator from Michigan [Mr. LEVIN] 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. 641

At the request of Mrs. KASSEBAUM, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 641, A bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 644

At the request of Mr. CAMPBELL, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 644, a bill to amend title 38, United States Code, to reauthorize the establishment of research corporations in the Veterans Health Administration, and for other purposes.

SENATE CONCURRENT RESOLUTION 9

At the request of Mr. MURKOWSKI, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of Senate Concurrent Resolution 9, a concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Tenghui of the Republic of China on Taiwan to the United States.

AMENDMENT NO. 545

At the request of Mr. BUMPERS the names of the Senator from North Dakota [Mr. DORGAN], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of amendment No. 545 intended to be proposed to H.R. 1158, a bill making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes.

SENATE RESOLUTION 115—RELATING TO THE 50TH ANNIVERSARY OF V–E DAY

By Mr. DOLE (for himself, Mr. INOUYE, Mr. THURMOND, MR. HEFLIN, Mr. STEVENS, Mr. GORTON, Mr. WARNER, Mr. BUMPERS, Mr. CHAFEE, Mr. PELL, Mr. HATFIELD, Mr. GLENN, Mr. ROTH, Mr. HELMS, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. EXON, Mr. AKAKA, Mr. FORD, Mr. HOLLINGS, Mr. DASCHLE, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BAUCUS, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BURNS, Mr. BYRD, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. FAIRCLOTH, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRIST, Mr. GRAHAM, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KENNEDY, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mrs. MURRAY, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PRESSLER, Mr. PRYOR, Mr. REID, Mr. ROBB, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SARBANES, Mr. SHELBY, Mr. SIMON, Mr. SIMPSON, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. THOMAS, Mr. THOMPSON, and Mr. WELLSTONE) submitted the following resolution; which was considered and agreed to:

S. RES. 115

Whereas on May 7, 1945 in Reims, France, the German High command signed the document of surrender, surrendering all air, land and sea forces unconditionally to the Allies;

Whereas President Harry S Truman proclaimed May 8, 1945 to be V–E Day:

Whereas May 8, 1995 is the 50th Anniversary of that proclamation:

Whereas, the courage and sacrifice of the American fighting men and women who served with distinction to save the world from tyranny and aggression should always be remembered; Now, therefore, be it

Resolved, the United States Senate joins with a grateful nation in expressing our respect and appreciation to the men and women who served in World War II, and their families. Further, we remember and pay tribute to those Americans who made the ultimate sacrifice and gave their life for their country.

SENATE RESOLUTION 116—COMMENDING THE LAKOTA AND DAKOTA CODE TALKERS

Mr. DASCHLE (for himself, Mr. INOUYE, Mr. MCCLAIN, and Mr. PRESSLER) submitted the following resolution; which was agreed to:

S. RES. 116

Whereas the Lakota and Dakota Code Talkers, Native Americans who were members of the Sioux Nation, worked in radio communications during World War II and used their Lakota and Dakota languages to relay communications;

Whereas Japanese cryptologists never deciphered the Native American languages that were used as codes during World War II, including the Lakota and Dakota languages; and

Whereas the Lakota and Dakota Code Talkers deserve to be recognized for their contribution to the successful resolution of the war effort in the Pacific: Now, therefore, be it

Resolved, That the Senate recognizes and commends the Lakota and Dakota Code Talkers for their invaluable contribution to the successful resolution of World War II.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY REFORM ACT

MOSELEY-BRAUN AMENDMENT NO. 691

(Ordered to lie on the table.)

Ms. MOSELEY-BRAUN submitted an amendment intended to be proposed by her to amendment No. 690, proposed by Mr. COVERDELL, to amendment No. 596, proposed by Mr. GORTON, to the bill (H.R. 596) to establish legal standards and procedures for product liability

litigation, and for other purposes; as follows:

In the pending amendment, on page 21 strike lines 7 through 12.

FEINGOLD AMENDMENT NO. 692

(Ordered to lie on the table.)

Mr. FEINGOLD submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 7, line 23, insert in section 101(12)(B)(i) after the word ''negligence'' the following: ''or any product designed or marketed primarily for the use of children''.

SHELBY (AND HEFLIN) AMENDMENT NO. 693

(Ordered to lie on the table.)

Mr. SHELBY (for himself and Mr. HEFLIN) submitted an amendment intended to be proposed by them to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to this section, but only during such time as the State law so provides.

DODD AMENDMENTS NOS. 694–695

(Ordered to lie on the table.)

Mr. DODD submitted two amendments intended to be proposed by him to amendment No. 690, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 694

Strike section 106 of the amendment and insert the following new section:

SEC. 106. UNIFORM STANDARDS FOR AWARDS OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in an action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) BIFURCATION AND JUDICIAL DETERMINATION.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A BIFURCATED PROCEEDING.—Notwithstanding any other provision of this Act, in any proceeding to determine whether the claimant in an action that is subject to this Act may be awarded compensatory damages and punitive damages, evidence of the defendant's financial condition and other evidence bearing on the amount of punitive damages shall not be admissible unless the evidence is admissible for a purpose other than for determining the amount of punitive damages.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in a separate proceeding conducted under paragraph (1) shall include evidence that bears on the factors listed in paragraph (3).

(3) FACTORS.—Notwithstanding any other provision of this Act, in determining the amount of punitive damages awarded in an action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct, including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

(4) REASONS FOR SETTING AWARD AMOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, with respect to an award of punitive damages in an action that is subject to this Act, in findings of fact and conclusions of law issued by the court, the court shall clearly state the reasons of the court for setting the amount of the award. The statements referred to in the preceding sentence shall demonstrate the consideration of the factors listed in subparagraphs (A) through (G) of paragraph (3). If the court considers a factor under subparagraph (H) of paragraph (3), the court shall state the effect of the consideration of the factors on setting the amount of the award.

(B) REVIEW OF DETERMINATION OF AWARD AMOUNT.—The determination of the amount of the award shall only be reviewed by a court as a factual finding and shall not be set aside by a court unless the court determines that the amount of the award is clearly erroneous.

AMENDMENT NO. 695

At the appropriate place in the amendment, insert the following new section:

SEC. . ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—

(1) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(2) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in paragraph (3), not later than 10 days after the service of an offer to proceed under paragraph (1), an offeree shall file a written notice of acceptance or rejection of the offer.

(3) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in paragraph (2), extend the period for filing a written notice under such paragraph for a period of not more than 60 days after the date of expiration of the period specified in paragraph (2). Discovery may be permitted during such period.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—

(1) IN GENERAL.—The court shall assess reasonable attorney's fees (calculated in accordance with paragraph (2)) and costs against the offeree, incurred by the offeror during trial if—

(A) a defendant as an offeree refuses to proceed pursuant to the alternative dispute resolution procedure referred to subsection (a)(1);

(B) final judgment is entered against the defendant for harm caused by the product that is the subject of the action; and

(C) the refusal by the defendant to proceed pursuant to such alternative dispute resolution was unreasonable or not made in good faith.

(2) REASONABLE ATTORNEY'S FEES.—For purposes of this subsection, a reasonable attorney's fee shall be calculated on the basis of an hourly rate, which shall not exceed the hourly rate that is considered acceptable in the community in which the attorney practices law, taking into consideration the qualifications and experience of the attorney and the complexity of the case.

(c) GOOD FAITH REFUSAL.—In determining whether the refusal of an offeree to proceed pursuant to the alternative dispute procedure referred to in subsection (a)(1) was unreasonable or not made in good faith, the court shall consider—

(1) whether the case involves potentially complicated questions of fact;

(2) whether the case involves potentially dispositive issues of law;

(3) the potential expense faced by the offeree in retaining counsel for both the alternative dispute resolution procedure and to litigate the matter for trial;

(4) the professional capacity of available mediators within the applicable geographic area; and

(5) such other factors as the court considers appropriate.

HEFLIN (BY REQUEST) AMENDMENT NO. 696

(Ordered to lie on the table.)

Mr. HEFLIN (by request) submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place in the amendment that is pending insert the following:

INSURABILITY OF PUNITIVE DAMAGES

(1) Insurance companies properly licensed under state law shall be permitted to issue policies covering liability giving rise to punitive or exemplary damages.

(2) Nothing herein shall require insurers to offer such insurance policies for punitive or exemplary damages.

(3) Such policies shall be effective in all states of the United States, notwithstanding state law to the contrary.

BOXER AMENDMENTS NOS. 697–702

(Ordered to lie on the table.)

Mrs. BOXER submitted six amendments intended to be proposed by her to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 697

In section 103, strike subsection (a) and insert the following new subsection:

(a) GENERAL RULE.—Except as otherwise provided under applicable State law, in any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller.

AMENDMENT NO. 698

At the appropriate place, insert the following: ''Notwithstanding Section 106 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to facial disfigurement.''

AMENDMENT NO. 699

At the appropriate place, insert the following: ''Notwithstanding Section 106 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to brain damage.''

AMENDMENT NO. 700

At the appropriate place, insert the following: ''Notwithstanding Section 106 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to the loss of human reproductive function.''

AMENDMENT NO. 701

At the appropriate place, insert the following: ''Notwithstanding Section 106 with regard to Uniform Standards for Award of Punitive Damages, the limitation of amount for punitive damages shall not apply to the loss of a limb.''

AMENDMENT NO. 702

Strike all of Title II in the pending amendment.

HEFLIN (BY REQUEST) AMENDMENT NO. 703

(Ordered to lie on the table.)

Mr. HEFLIN (by request) submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place in the amendment that is pending insert the following:

INSURABILITY OF PUNITIVE DAMAGES

(1) Insurance companies properly licensed under State law shall be permitted to issue policies covering liability giving rise to punitive or exemplary damages.

(2) Nothing herein shall require insurers to offer such insurance policies for punitive or exemplary damages.

(3) Such policies shall be effective in all States of the United States, notwithstanding State law to the contrary.

HARKIN AMENDMENT NO. 704

(Ordered to lie on the table.)

Mr. HARKIN submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

In section 106(b)(2)(B) of the matter proposed to be inserted, strike ''Punitive damages'' and all that follows through the end of the subparagraph and insert the following:

''(i) Notwithstanding paragraph (1), the amount of punitive damages that may be awarded in any product liability action that is subject to this title against an owner of an unincorporated business, or any partnership, corporation, unit of local government, or organization that has 25 or more full-time employees shall be the greater of—

(I) an amount determined under paragraph (1); or

(II) 2 times the average value of the annual compensation of the chief executive officer (or the equivalent employee) of such entity during the 3 full fiscal years of the entity immediately preceding the date of which the award of punitive damages is made.

(ii) For the purposes of this subparagraph, the term 'compensation' includes the value of any salary, benefit, bonus, grant, stock option, insurance policy, club membership, or any other matter having pecuniary value.''.

SPECTER AMENDMENTS NOS. 705–707

(Ordered to lie on the table.)

Mr. SPECTER submitted three amendments intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 705

On page 23, after line 7, add the following new subsection:

(c) EXCEPTION.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), in a product liability action that is subject to this title, the liability of the defendant for noneconomic loss shall be joint and several if the percentage of responsibility of the defendant is determined to be greater than or equal to 15 percent of the harm to the claimant.

(2) DETERMINATION OF PERCENTAGE OF RESPONSIBILITY.—For purposes of paragraph (1), in a product liability action that is subject to this title, the trier of fact shall determine the percentage of responsibility of each defendant for the harm to the claimant.

AMENDMENT NO. 706

On page 27, after line 23, insert the following:

SEC. 111. FOREIGN PRODUCTS.

(a) GENERAL RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in any product liability action that is subject to this title for any harm sustained in the United States that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal district court in which the action is filed shall have personal jurisdiction over such manufacturer if the court determines that the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(2) SERVICE OF PROCESS.—Process in any action described in paragraph (1) may be served at any location at which the foreign manufacturer is located, has an agent, or regularly transacts business.

(b) ADMISSION.—In any product liability action that is subject to this title, if a foreign manufacturer of the product fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, that failure shall be deemed to be an admission by such manufacturer of any and all facts to which the discovery order relates.

AMENDMENT NO. 707

On page 18, strike lines 18–25 and insert in lieu thereof:

The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed ten (10) percent of the net worth of the defendant against whom they are imposed.

HOLLINGS AMENDMENT NO. 708

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law—

(1) if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected; or

(2) adopted after the date of enactment of this Act.

GORTON AMENDMENT NO. 709

Mr. GORTON proposed an amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

In lieu of the language proposed to be inserted insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act of 1995''.

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACTUAL MALICE.—The term ''actual malice'' means specific intent to cause serious physical injury, illness, disease, or damage to property, or death.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(3) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term ''clear and convincing evidence'' is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(6) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(7) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(8) HARM.—The term ''harm'' means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(9) INSURER.—The term ''insurer'' means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(10) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(11) NONECONOMIC LOSS.—The term ''noneconomic loss''—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(12) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(13) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(14) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(15) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(16) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(17) TIME OF DELIVERY.—The term ''time of delivery'' means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

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

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

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

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

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

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing w±as a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101 (14)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 2 times the sum of—

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

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—The amount of punitive damages that may be awarded in a product liability action that is subject to this title against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, shall not exceed the lesser of—

(A) 2 times the sum of—

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

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(3) EXCEPTION.—

(A) DETERMINATION BY COURT.—Notwithstanding subsection (c), in a product liability action that is subject to this title, if the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) or (2) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages in excess of the amount determined in accordance with paragraph (1) or (2) to be awarded to the claimant (referred to in this paragraph as the ''additur'') in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under subparagraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the misconduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant;

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders; and

(ix) any other factor that the court determines to be appropriate.

(C) REQUIREMENTS FOR AWARDING ADDITURS.—If the court awards an additur under this paragraph, the court shall state its reasons for setting the amount of the additur in findings of fact and conclusions of law. If the additur is—

(i) accepted by the defendant, it shall be entered by the court as a final judgment;

(ii) accepted by the defendant under protest, the order may be reviewed on appeal; or

(iii) not accepted by the defense, the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only, and judgment shall enter upon the verdict of liability and damages after the issue of punitive damages is decided.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 108. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 109. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 110. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 111. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1995''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of

lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The bio- materials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the bio- materials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the bio- materials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the

grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

HOLLINGS AMENDMENTS NOS. 710–728

(Ordered to lie on the table.)

Mr. HOLLINGS submitted 19 amendments intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 710

At the appropriate place in title I, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed 2 times the sum of—

(1) the amount awarded to the claimant for the economic loss on which the claim is based; and

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

(b) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

AMENDMENT NO. 711

At the appropriate place in title I, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed the greater of—

(1) an amount equal to 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or

(2) $250,000.

(b) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

AMENDMENT NO. 712

On page 22, beginning with line 11, strike through line 7 on page 23.

AMENDMENT NO. 713

On page 8, strike lines 1 through 4 and insert the following:

(13) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action, brought against a manufacturer, seller, or any other person responsible for the distribution of a product in the stream of commerce, involving a defect or design of the product on any theory for harm caused by the product.

AMENDMENT NO. 714

Strike section 106, relating to punitive damages.

AMENDMENT NO. 715

On page 18, beginning with line 7, strike through line 2 on page 20.

AMENDMENT NO. 716

Strike subsection (b) of section 106, relating to limitations on the amount of punitive damages.

AMENDMENT NO. 717

On page 18, beginning with line 17, strike down to line 11 on page 19.

AMENDMENT NO. 718

Strike subsection (c) of section 106.

AMENDMENT NO. 719

On page 19, beginning with line 12, strike through line 2 on page 20.

AMENDMENT NO. 720

Strike lines 19 through 23 on page 27.

AMENDMENT NO. 721

Strike lines 9 through 18 on page 12.

AMENDMENT NO. 722

Strike lines 7 through 12 on page 21.

AMENDMENT NO. 723

On page 5, beginning with ''The'' on line 10, strike through line 12.

AMENDMENT NO. 724

Strike lines 8 through 14 on page 10.

AMENDMENT NO. 725

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law inconsistent with this Act if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected.

AMENDMENT NO. 726

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law adopted after the date of enactment of this Act.

AMENDMENT NO. 727

On page 1, after line 3, insert the following:

SEC. 2. STATE IMPLEMENTATION REQUIRED.

Notwithstanding any provision of this Act to the contrary, nothing in this Act shall supersede any provision of State law or rule of civil procedure unless that State has enacted a law providing for the application of this Act in that State.

AMENDMENT NO. 728

On page 27, after line 23, insert the following:

SEC. 111. APPLICATION OF ACT LIMITED TO DOMESTIC PRODUCTS.

Notwithstanding any other provision of this Act, this Act shall not apply to any product, component part, implant, or medical device that is not manufactured in the United States within the meaning of the Buy American Act (41 U.S.C. 10a) and the regulations issued thereunder, or to any raw material derived from sources outside the United States.

BYRD (AND OTHERS) AMENDMENT NO. 729

(Ordered to lie on the table.)

Mr. BYRD (for himself, Mr. BAUCUS, and Mr. REID) submitted an amendment intended to be proposed by them to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place, insert

Inasmuch as, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Inasmuch as, tension exists in an otherwise normal and friendly relationship between the United States and Japan because of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American products to the Japanese market;

Inasmuch as, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in automotive sector, and of which $12.8 billion is attributable to auto parts flows:

Inasmuch as, in July, 1993, the Administration reached a broad accord with the Government of Japan, called the ''United States-Japan Framework for a New Economic Partnership'', which established automotive trade regulations as one of 5 priority areas for negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Inasmuch as, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill its commitments to remain as an engaged, deployed, Pacific power;

Inasmuch as, after 18 months of negotiations with the Japanese, beginning in September 1993, the U.S. Trade Representative concluded that no progress had been achieved, leaving the auto parts market in Japan ''virtually closed'';

Inasmuch as, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Inasmuch as, the latest round of U.S.-Japan negotiations on automotive trade, in Whistler, Canada, collapsed in failure on May 5, 1995, and the U.S. Trade Representative, Ambassador Kantor, stated the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of autos and auto parts continues.''

Inasmuch as, President Clinton stated, on May 5, 1995, that the U.S. is ''committed to taking strong action'' regarding Japanese imports into the U.S. if no agreement is reached.

Now, therefore, be it

Declared, That it is the Sense of the Senate that—

(1) the Senate supports the efforts of the President to continue to strongly press the Government of Japan, through bilateral negotiations under the agreed ''Framework for a New Economic Partnership,'' for sharp reductions in the trade imbalances in automotive sales and parts through the elimination of unfair and restrictive Japanese market-closing practices and regulations; and

(2) If such results-oriented negotiations are not concluded satisfactorily, appropriate and reasonable measures, up to and including trade sanctions, should be imposed in accordance with Section 301 of the trade Act of 1974.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NICKLES. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Energy Production and Regulation.

The hearing will take place Thursday, May 18, 1995, at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on S. 283, a bill to provide for the extension of the deadline under the Federal Power Act applicable to two hydroelectric projects in Pennsylvania, and for other purposes, S. 468, a bill to provide for the extension of the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Ohio, and for other purposes, S. 543, a bill to provide for the extension of the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Oregon, and for other purposes, S. 547, a bill to provide for the extension of the deadlines applicable to certain hydroelectric projects under the Federal Power Act, and for other purposes, S. 549, a bill to provide for the extension of the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas, S. 552, a bill to provide for the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act and for other purposes, S. 595, a bill to provide for the extension of a hydroelectric project located in the State of West Virginia, and S. 611 a bill to provide for the extension of time limitation for a FERC-issued hydroelectric license.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Judy Brown or Howard Useem at 202–224–6567.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NICKLES. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Energy Production and Regulation.

The hearing will take place Tuesday, June 6, 1995, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on S. 708, a bill to repeal section 210 of the Public Utility Regulatory Policies Act of 1978.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.s. Senate, Washington, DC 20510. For further information, please call Judy Brown or Howard Useem at 202–224–6567.

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. CRAIG. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Forests and Public Land Management.

The hearing will take place Tuesday, May 23, 1995, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony regarding S. 620, Reclamation Facilities Transfer Act.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, attention Betty Nevitt, U.S. Senate, Washington, DC 20510. For further information, please call Jim Beirne at (202) 224–2564 or Betty Nevitt at 202–224–0765.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to consider S. 638, the Insular Development Act of 1995.

The hearing will take place Thursday, May 25, 1995, at 2 p.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Jim Beirne at (202) 224–2564 or Betty Nevitt at 202–224–0765.

ADDITIONAL STATEMENTS

BUDGET SCOREKEEPING REPORT

• Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the budget through May 5, 1995. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the concurrent resolution on the budget (H. Con. Res. 218), show that current level spending is below the budget resolution by $5.6 billion in budget authority and $1.4 billion in outlays. Current level is $0.5 billion over the revenue floor in 1995 and below by $9.5 billion over the 5 years 1995–99. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $238 billion, $3.1 billion below the maximum deficit amount for 1995 of $241 billion.

Since my last report, dated April 24, 1995, there has been no action that affects the current level of budget authority, outlays, or revenues.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1995.

Hon. PETE DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report for fiscal year 1995 shows the effects of Congressional action on the 1995 budget and is current through May 5, 1995. The estimates of budget authority, outlays and revenues are consistent with the technical and economic assumptions of the 1995 Concurrent Resolution on the Budget (H. Con. Res. 218). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements of Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated April 24, 1995, there has been no action that affects the current level of budget authority, outlays or revenues.

Sincerely,

JUNE E. O'NEILL,
Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1995, 104TH CONGRESS, 1ST SESSION, AS OF CLOSE OF BUSINESS MAY 5, 1995

[In billions of dollars]

	Budget resolution (H. Con. Res. 218) [1]	Current level [2]	Current level over/ under resolution
ON-BUDGET			
Budget authority	1,238.7	1,233.1	−5.6
Outlays	1,217.6	1,216.2	−1.4
Revenues:			
1995	977.7	978.2	0.5
1995–99	5,415.2	5,405.7	−9.5
Deficit	241.0	238.0	−3.1
Debt subject to limit	4,965.1	4,764.5	−200.6
OFF-BUDGET			
Social Security outlays:			
1995	287.6	287.5	−0.1
1995–99	1,562.6	1,562.6	[3] 0.
Social Security revenues:			
1995	360.5	360.3	−0.2
1995–99	1,998.4	1,998.2	−0.2

[1] Reflects revised allocation under section 9(g) of H. Con. Res. 64 for the Deficit-Neutral reserve fund.

[2] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[3] Less than $50 million.

Note: Detail may not add due to rounding.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 104TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1995 AS OF CLOSE OF BUSINESS MAY 5, 1995

[In millions of dollars]

	Budget authority	Outlays	Revenues
ENACTED IN PREVIOUS SESSIONS			
Revenues	.....	.....	978,466
Permanents and other spending legislation	750,307	706,236	.....
Appropriation legislation	738,096	757,783	.....
Offsetting receipts	(250,027)	(250,027)	.....
Total previously enacted	1,238,376	1,213,992	978,466
ENACTED THIS SESSION			
1995 Emergency Supplementals and Rescissions Act (Public Law 104–6).	(3,386)	(1,008)	.....
Self-Employed Health Insurance Act (Public Law 104–7)	.....	.....	(248)
Total enacted this session	(3,386)	(1,008)	(248)
ENTITLEMENTS AND MANDATORIES			
Budget resolution baseline estimates of appropriated entitlements other mandatory programs not yet enacted	(1,887)	3,189	.....
Total current level [1]	1,233,103	1,216,173	978,218
Total budget resolution	1,238,744	1,217,605	977,700
Amount remaining:			
Under budget resolution	5,641	1,432	.....
Over budget resolution	.....	.....	518

[1] In accordance with the Budget Enforcement Act, the total does not include $3,905 million in budget authority and $7,442 million in outlays in funding for emergencies that have been designated as such by the President and the Congress, and $841 million in budget authority and $917 million in outlays for emergencies that would be available only upon an official budget request from the President designating the entire amount requested as an emergency requirement.

Notes: Numbers in parentheses are negative. Detail may not add due to rounding.•

TIME FOR REAL FARM REFORM

• Mr. DORGAN. Mr. President, no other legislation which is likely to come before the Congress this year will have more direct impact on my State, North Dakota, and the people who live there than the 1995 farm bill. For a farm State, for a State with a predominantly rural economy, it is critically important legislation.

When Congress and the President begin to draft that legislation, I believe it is essential that we be about the business of fundamental reform. The time for farm program facelifts has long since passed. It is time for real change, change that returns the farm program to its fundamental and original mission: helping family farmers survive and prosper.

I recently wrote a guest editorial which was published in a number of North Dakota newspapers which outlined my thinking on this important issue in some detail. I would like to share that article, and those thoughts, with my colleagues and ask that it be reprinted at this point in the RECORD.

The editorial follows:

NO MORE FACELIFTS FOR THE FARM PROGRAM—IT'S TIME FOR REAL REFORM

(By U.S. Senator Byron L. Dorgan)

The new U.S. Secretary of Agriculture, Dan Glickman, is coming to North Dakota Friday at my invitation to meet with family farmers. His visit comes at both an opportune and very challenging time.

This year Congress will cut federal spending to reduce the deficit. It will also write a new five year farm program. The two are closely related. Budget pressures will limit the amount of money available for a farm program.

Farm program price supports have already been cut deeply—slashed by 62% since 1986—but still, some leaders in the new Congress are pushing for even deeper cuts. House Majority Leader Dick Armey (R–TX) and Senate Agriculture Committee Chair Richard Lugar (R–IN) are calling outright for the federal farm program to be phased down and, effectively, abolished.

Those of us who believe that a decent farm program is essential to the survival of family farmers face a major challenge. To retain a decent farm program, we are going to have to propose new, and more effective approaches. We must take a fresh look at what works and what doesn't in the farm program.

I hope that will be the focus of the discussion in North Dakota on Friday with the Secretary of Agriculture.

At the outset we have to admit that the current farm program doesn't work very well.

First, price supports are too low to offer real protection to family-sized farms. That's because the nation's largest farms—often big corporate farms—soak up too much of the farm program's funds.

Second, the current farm program is far too complicated.

Third, it is built on a ''supply management'' approach that no longer works. In the new global market place of the 1990's and beyond, it is virtually impossible for one nation to control supplies. When we cut production of a commodity, other countries eargerly step in and fill the gap.

The bottom line is that the current farm program does not do a good job serving as a safety net for family farmers nor does it do much to boost market prices for farm commodities.

Under the current program, we have ended up with more government employees to run the farm program, and fewer family farmers. That's moving in the wrong direction.

So, this year we need real reform—not another farm program facelift.

A NEW APPROACH

The first thing we must do in re-thinking the federal farm program is to establish a new benchmark for farm legislation, one that focuses on preserving and building a network of family farms which are the backbone of rural America's economy and its communities.

The first sentence in the new 1995 Farm Bill should state, clearly, that the objective of the federal farm program is to help preserve and build a network of family farms. Everything after that must work to make that goal a reality.

If the purpose of the farm program isn't to give family farmers an opportunity to make a living on the farm, then we ought to scrap it. We don't need a farm program that helps giant agri-factories plow the ground.

THE DORGAN PLAN TO STRENGTHEN FAMILY FARMS

I propose a family farm-targeted farm program, which would provide a better price safety net for family farmers.

It would end government interference so that all farmers could make their own production decisions based on the best use of their land resources, the opportunities of the marketplace, and their skills and knowledge as producers.

Here is how it would work:

1. My plan would establish a new Family Farm Target Price at $4.50 per bushel on wheat (compared to the current target price of $4.00 per bushel) up to the first 20,000 bushels of production. Proportional target prices and production levels would be set to cover feed grains or a producer's mix of basic farm program commodities.

2. Farmers would be free to make their own decisions about what they produce based on the market situation. Production beyond the amount of grain eligible for target prices, would be up to the farmer, and would not receive farm program benefits.

If someone wants to farm an entire county, they have every right to do that. But under my plan, they, like family-sized farms would get price protection for 20,000 bushels of wheat produced. What they produce above that, they do without any government interference, and without price supports—they assume all the risks of the market place.

3. On those first 20,000 bushels of wheat, the plan would provide non-recourse market-opportunity loans set at out-of-pocket production costs as determined by the Secretary of Agriculture. Crops produced beyond this benchmark level would not be eligible for this loan.

4. It would extend the Conservation Reserve Program (CRP) and make it more flexible to assist producers in meeting stewardship and environmental goals. Savings achieved by making some changes in the CRP program could be used to restore funding for other conservation programs that assist farmers, and to improve farm program support prices.

5. It would limit participation in the farm price support program to those who are actively engaged in farming, and end program payments to off-farm investors. We could use the savings to improve the safety net of price supports for family farmers.

My plan tightly focuses federal farm programs—and dollars—on family farmers. It would put price supports under family *farmers*, rather than under farm commodities.

It will provide our farm families the opportunity to make a living at efficient levels of production.

It will provide an abundant supply of efficiently produced food and fiber for our nation, and make the best use of limited federal farm program dollars. It will provide the strongest price support for the first increment of production which will provide the most help for family sized farms.

It will end the practice of providing unnecessary and unlimited price protection to the nation's largest corporate farms, while shortchanging the nation's family farmers.

My farm program proposal would also end the practice of paying price supports to off-farm investors. We would define who is really a farmer and who is farming the system. Under my plan, the farm price safety net would go to actual farm operators (and retired farmers who derive a majority of their income from crop-share arrangements). The safety net would extend only to those who are engaged in the day-to-day running of a farm operation or depend on a farm operation for a majority of their income.

We would repeal and close the loopholes by which some of the biggest landholders and corporations receive multiple farm program entitlements.

We need to get back to the original purpose of agricultural programs: to preserve and protect a network of family farms and help them compete in an unpredictable world in which weather, market conditions, and economic policies constantly undermine their efficiency and their productivity.

My family farm targeted farm program would give family farmers a chance—an opportunity—to preserve a production system and a lifestyle that is important to our country.●

HONORING THE UNIVERSITY OF CALIFORNIA AT LOS ANGELES BASKETBALL COACH JIM HARRICK

● Mr. ABRAHAM. Mr. President, I rise to pay tribute to a great man and a great head coach; Jim Harrick of the UCLA Bruins.

While everyone may be familiar with Jim's most recent accomplishment, winning the 1995 NCAA Championship, those that have followed his career see a man that has accepted challenge after challenge and built a reputation for success.

Jim attended the University of Charleston were, in addition to receiving his bachelor's degree in speech, he earned a place in the Hall of Fame and Alumni Gallery of Achievement. He then went on to complete his master's degree in education from the University of Southern California.

Jim began his coaching career at Morningside High in Los Angeles, averaging over 25 victories and winning three Sky League titles in four seasons. After distinguishing himself as an assistant coach at Utah State and later UCLA, Jim accepted the head coach position at Pepperdine University. In his nine seasons at Pepperdine, coach Harrick won five conference titles, four WCAC Coach of the Year Awards, and, of course, the invitation to come back to UCLA as the new head coach.

The UCLA basketball program has flourish under Jim's direction. He is the first UCLA coach to have 7 consecutive 20-win seasons and 7 straight tournament bids in his initial 7 seasons. At 146 wins and 54 losses, he also owns the best UCLA record after his first 200 games. Under coach Harrick's tutelage, the Bruins have advanced to the NCAA tournament's second round five times, the Sweet 16 three times, the Elite Eight twice and, in 1995, earned the crowning achievement as NCAA National Champions.

And it is important to note that Jim Harrick's successes have not all come on the basketball court. He and his wife, Sally, celebrate 34 years of marriage and proudly speak of their three sons, Monte, Jim, and Glenn, and of their granddaughter, Morgan Paige. His integrity and character are well known and have earned him invitations to travel the world as an American goodwill ambassador.

His dedication to the game, his concern with the well-being of the players, his focus and determination, and the integrity of the UCLA program all show his fine qualities as a coach and as an American.●

ORDERS FOR TUESDAY, MAY 9, 1995

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:15 a.m. on Tuesday, May 9, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the exception of the following: Senator THOMAS, 20 minutes; Senator DASCHLE or his designee, 20 minutes; Senator LEVIN, 20 minutes; Senator SANTORUM, 10 minutes; I further ask unanimous consent that at the hour of 10:30 a.m., the Senate proceed to a vote on the confirmation of the nomination of John Deutch to be Director of CIA, to be immediately followed by a vote on the motion to invoke cloture on the Coverdell-Dole amendment.

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

Mrs. HUTCHISON. Mr. President, I now ask unanimous consent that Senators have until 10:15 a.m. Tuesday to file first-degree and second-degree amendments; further, that the Senate stand in recess between the hours of 12:30 and 2:15 Tuesday for the weekly policy luncheons to meet.

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

Mrs. HUTCHISON. Mr. President, for the information of all Senators, there will be two consecutive rollcall votes beginning at 10:30 tomorrow morning. The first vote is on the Deutch nomination, to be followed by a vote on the cloture motion on the Coverdell-Dole amendment.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the Senator from New Mexico [Mr. BINGAMAN] as a member of the Senate Delegation to the Mexico-United States Interparliamentary Group during the first session of the 104th Congress, to be held in Tucson, AZ, May 12–14, 1995.

The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appoints the following Senators as members of the Senate delegation to the North Atlantic Assembly Spring Meeting during the first session of the 104th Congress, to be held in Budapest, Hungary, May 25–29, 1995:

The Senator from Alaska [Mr. MURKOWSKI]; the Senator from Colorado [Mr. BROWN]; the Senator from New Hampshire [Mr. GREGG]; the Senator from Texas [Mrs. HUTCHISON]; the Senator from Louisiana [Mr. JOHNSTON]; the Senator from Arkansas [Mr. PRYOR]; and the Senator from Hawaii [Mr. AKAKA].

RECESS UNTIL 9:15 A.M. TOMORROW

Mrs. HUTCHISON. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 6:22 p.m., recessed until Tuesday, May 9, 1995, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate May 8, 1995:

CIVIL LIBERTIES PUBLIC EDUCATION FUND

LEO K. GOTO, OF COLORADO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CIVIL LIBERTIES PUBLIC EDUCATION FUND FOR A TERM OF 2 YEARS. (NEW POSITION).

DEPARTMENT OF JUSTICE

PATRICK M. RYAN, OF OKLAHOMA, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS, VICE VICKI MILES-LAGRANGE, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 8, 1995:

U.S. INSTITUTE OF PEACE

HARRIET M. ZIMMERMAN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

MAXINE M. CHESNEY, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA.

ELDON E. FALLON, OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

CURTIS L. COLLIER, OF TENNESSEE, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE.

JOSEPH ROBERT GOODWIN, OF WEST VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.

DEPARTMENT OF JUSTICE

JOE BRADLEY PIGOTT, OF MISSISSIPPI, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF 4 YEARS.