in certain activities involving derivative financial instruments; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEVIN:

S. 558. A bill for the relief of Retired Sergeant First Class James D. Benoit, Wan Sook Benoit, and the estate of David Benoit, and for other purposes; to the Committee on the Judiciary.

By Mr. SIMPSON:

S. 559. A bill to amend the Lanham Act to require certain disclosures relating to materially altered films; to the Committee on the Judiciary.

By Mr. DASCHLE:

S. 560. A bill to amend section 6901 of title 31, United States Code, to entitle units of general local government to payments in lieu of taxes for nontaxable Indian land; to the Committee on Indian Affairs.

By Mr. CHAFEE:

S. 561. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAMM (for himself and Mr. SHELBY):

S. 562. A bill to provide for State bank representation on the Board of Directors of the Federal Deposit Insurance Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GREGG:

S. 563. A bill to amend the Internal Revenue Code of 1986 to treat recycling facilities as exempt facilities under the tax-exempt bond rules, and for other purposes; to the Committee on Finance.

By Mr. BIDEN:

S. 564. A bill to confer and confirm Presidential authority to use force abroad, to set forth principles and procedures governing the exercise of that authority, and thereby to facilitate cooperation between the President and Congress in decisions concerning the use or deployment of United States Armed Forces abroad in situations of actual or potential hostilities.

By Mr. ROCKEFELLER (for himself, Mr. GORTON, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE):

S. 565. A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 566. A bill for the relief of Richard M. Sakakida; to the Committee on Armed Services.

By Mrs. BOXER:

S. 567. A bill to amend the Internal Revenue Code of 1986 to allow the casualty loss deduction for disaster losses without regard to the 10-percent adjusted gross income floor; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DORGAN:

S. 557. A bill to prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments; to the Committee on Banking, Housing, and Urban Affairs.

THE DERIVATIVES LIMITATION ACT OF 1995

● Mr. DORGAN. Mr. President, today I reintroduce my legislation called the Derivatives Limitation Act to prohibit banks and other federally insured financial institutions from engaging in risky, speculative derivatives trading on their own accounts. In my judgment such proprietary trading involves a degree of risk that is totally out of step with safe banking practices.

Last year, the General Accounting office [GAO] issued a major report raising a red flag about the risks of derivatives trading. Since this report, a number of financial institutions and other derivative investors have suffered enormous losses totaling billions of dollars. Because of tremendous growth of the derivatives market, which is now estimated at $35 billion worldwide, a major default, Fortune magazine said, could ignite a chain reaction that runs rampant through the financial markets in the United States and overseas. ''Inevitably, that would put deposit insurance funds, and the taxpayers behind it, at risk.''

Most of us know that derivatives are essentially a form of gambling. Derivatives may be the most complicated financial device ever, contracts based on mathematical formulas, involving multiples and interwoven bets on currency and interest rates and more in a burgeoning galaxy of permutations. Generally, investors stake a position that interest rates, or the dollar, or commodities, or whatever, will rise or fall. Up to a point, this is simply a form of hedging risk. Some businesses including banks have hedged in this manner for many years, and my bill would not affect these traditional and conservative hedging transactions.

Far from hedging, some of largest players speculating in the derivatives game are banks. Three New York banks are into this market for over $6 trillion alone. All of these banks have federal deposit insurance. The purpose of my bill is to ensure that the banks don't have to use it to cover losses on derivatives trading for their own accounts.

The importance of preventing banks from gambling on risky derivatives is highlighted by the recent collapse of Barings PLC in London. As everyone knows, a 28-year-old trader for Barings Bank engaged in a speculative trading binge in the derivatives market. His actions have resulted in at least a $1 billion loss to Baring PLC, wiping out all of its capital and throwing it into insolvency. It is still unclear whether the failure of Barings will trigger others problems for the global financial markets.

This is not an isolated problem affecting a single foreign institution. The list of U.S. companies that have suffered from derivative losses is impressive, and is still growing. For example, our regulators were recently forced to take over Capital Corporate Credit Union [CapCorp], a large corporate credit union, because it loaded up on derivatives called collateralized mortgage obligations [CMO's] which soured over the past year. The General Accounting Office attributed CapCorp's failure, in part, to its inappropriate investment strategy and poor regulatory oversight.

We can't ignore the lessons to be learned from both Barings and CapCorp, or others hurt by derivatives like Orange County, CA, Piper Jaffray and Procter & Gamble. Banks, thrifts, and credit unions ought not be allowed to gamble on derivative investments because of the potential exposure to the deposit insurance fund. In my judgment, this financial roulette wheel is at odds with everything we know about sound banking principles.

I think that yesterday's Washington Post op-ed piece on derivatives called ''Lessons from Barings'' also makes a strong case for my legislation. It correctly states that ''if banks are to be allowed to trade on their own accounts, with their own money—as Barings was doing in Singapore—that operation needs to be absolutely segregated from the part of the bank that takes insured deposits from the public.'' And my bill accomplishes this by prohibiting banks and other insured institutions from gambling with derivatives on their own accounts. It exempts derivatives activity that is conducted in separately capitalized affiliates operating without the protection of the deposit insurance safety net.

Again, let me point out that not all derivatives are bad. Some are important to lower capital costs and reduce interest and other financial risks. That's why I do not cover traditional hedging transactions under my legislation.

But, it's been clear to me that highly leveraged speculation by large, federally insured banks on price changes and the like is not healthy for our economy. It also threatens the long-term stability of the financial markets and to continued viability of the deposit insurance fund system.

Of course, what individual investors knowingly do with their own money is their own business. But when financial institutions are setting up what amount to keno pits in their lobbies, it's something that should concern us all. I hope my colleagues will cosponsor this important legislation.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF THE DERIVATIVES LIMITATION ACT OF 1995

I. SHORT TITLE.

The act may be cited as the Derivatives Limitations Act of 1995.

II. INSURED DEPOSITORY INSTITUTIONS

(1) General Prohibition—

Except as provided below, the legislation prohibits any bank, thrift or credit union and any affiliate of such insured depository institution from engaging in any transaction involving a derivative financial instrument for the account of that institution or affiliate.

For this purpose, a ''derivative financial instrument'' means an instrument of value which is derived from the value of stocks, bonds, other loan instruments, other assets, interest or currency exchange rates, or indexes; and other instruments as determined by the appropriate federal bank regulators.

(2) Exceptions—

(a) Hedging Transactions.—An insured depository institution may engage in hedging transactions as permitted by the appropriate federal banking regulators.

For this purpose, ''hedging transaction'' generally means any transaction involving derivative financial instruments entered into in the normal course of the institution's business to reduce risk of interest rate, price change or currency fluctuations with respect to property held by the institution, or loans or other investments or obligations made or incurred by the institution.

(b) Separately Capitalized Affiliates.—A separately capitalized uninsured affiliate of an insured depository institution may engage in a transaction involving a derivative financial instrument if such affiliate complies with certain rules and regulations as issued by the appropriate federal banking regulators, including notice that none of the activities of the affiliate are insured by the federal government or the parent company of the affiliate.

(c) De Minimis Interests.—An insured depository institution may engage in transactions involving small interests in derivative financial instruments for the account of that institution as permitted by the appropriate federal bank regulators.

(d) Existing Interests.—Existing interests and the acquisition of certain reasonably related interests in derivative financial instruments are grandfathered under this legislation.●

By Mr. SIMPSON:

S. 559. A bill to amend the Lanham Act to require certain disclosures relating to materially altered films; to the Committee on the Judiciary.

THE FILM DISCLOSURE ACT OF 1995

Mr. SIMPSON. Mr. President, I rise today to introduce the Film Disclosure Act of 1995.

This legislation would recognize the interest we all have in preserving the integrity of one of the most uniquely American of art forms—the motion picture. I personally recoil at the thought of colorizing such classics as ''Casablanca'' or ''The Maltese Falcon.'' These films were intended to be shown in black and white by their creators.

Perhaps the most vivid example of an inappropriately altered film is the colorization of ''Lost Horizon.'' That film was necessarily filmed in black and white because the mythical paradise in which it is set—Shangri-La, a name that has come down through the decades—is formed by the author's and the audience's imagination. I personally knew one of the stars of the movie, Isabel Jewell, a marvelous woman, she filled me with imagination as she described the filming of that remarkable film. It is up to the viewer of ''Lost Horizon'' to ''fill in the blanks'' when visualizing that paradise. Quite frankly, I find colorization of that particular film to be demeaning and wholly inappropriate—unfair, if you will.

However, I also believe that any legislation that addresses film alteration must recognize the realities of the international market. The motion picture industry ranks high among all industries in producing a positive cash flow in the U.S. balance of trade. While protecting the artistic integrity of motion pictures, I believe it is also essential that Congress do nothing to impede or harm the financial arrangements by which motion pictures are made and distributed.

The object of this legislation is to ensure that the artistic authors of motion pictures—principal directors, screenwriters and cinematographers—may be able to inform the viewing public about any significant changes that are made to their work by studios or by television stations. The bill requires that labels be affixed to all films that are exhibited in a ''materially altered'' form. The label would contain two parts: first, the nature of the alterations would be described, and second, the objection, if any, of the principal artistic authors to the alterations would be clearly stated.

This bill does not prohibit the exhibition of materially altered films. Nor does the bill allow the principal artistic authors to have their names stricken from the altered versions of the film. The bill is ''truth in packaging.'' That is what it is, nothing more. It simply gives the consumers of films vital information on: first, the changes that have been made to the film, and second, the objection of the film's author to those changes, if such an objection exists. I might add that film authors in many European countries have much more extensive rights to object to significant alterations of their work than this bill would provide.

Here are the types of alterations—made by people other than the artistic authors—that this bill would require to be labeled: first, colorization; second, panning and scanning—changing the film's image to fit wider movies onto the narrower television screen; third, lexiconning—altering the sound track; fourth, time compression or expansion—speeding up or slowing down a film; and fifth, editing—removal of material or insertion of new material.

I know people understand that these alterations occur with surprising frequency. It is my personal belief that many of these alterations pass unnoticed by a viewing public which might wish to see the original version intended by the artist. I also believe that these alterations could discourage some artistic authors of films from making innovative films in the future. This would be a sad result.

However, let me emphasize again that this bill does not prevent alterations. It does not prevent copyright owners from changing the movie when it is distributed into the secondary markets—such as television or video stores. The bill simply will provide consumers with information on the workings of the market place for movies: it merely allows consumers of films to make the most informed choice possible when making their marketplace decision about what films to watch.

Mr. President, a little more knowledge never hurt anyone. I have visited over the years on this issue with directors and artists and actors and actresses who are offended to see the work that they have placed all of their energy and effort and skill and reputation into, seeing it jerked around, if you will, by people who have no sense or no sensitivity about the meaning of the train scene in a certain movie or this particular scene in ''High Noon'' or whatever was done with power, passion and skill by directors and actors and actresses.

That is what it is about. It is about knowledge. It is about the public's right to know. I hope that as this bill is reported to the American public, we will wrap around the cherished phrase of all journalists, the public's right to know. That is exactly what this is. More knowledge will not hurt any of the consumers. This is all the bill provides, more knowledge to the consumer about the original artist's intent when a film is publicly shown.

Mr. President, I commend this bill to my colleagues and ask for their support and ask unanimous consent a copy of the bill be printed in the RECORD.

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

S. 559

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Film Disclosure Act of 1995''.

SEC. 2. AMENDMENT TO THE LANHAM ACT.

Section 43 of the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, commonly known as the Lanham Act (15 U.S.C. 1125), is amended by adding at the end the following:

''(c)(1)(A) Any distributor or network that proposes to exploit a materially altered motion picture shall—

''(i) make a good faith effort to notify each artistic author of the motion picture in writing and by registered mail and in a reasonable amount of time prior to such exploitation;

''(ii) determine the objections of any artistic author so notified to any material alteration of the motion picture;

''(iii) determine the objection of any artistic author so notified by the questionnaire set forth in paragraph (9) to any type of future material alterations which are in addition to those specifically proposed for the motion picture to be exploited;

''(iv) if any objections under clause (ii) or (iii) are determined, include the applicable label under paragraph (6) or (8) in, or affix such label to, all copies of the motion picture before—

''(I) the public performance of the materially altered motion picture if it is already in distribution, or

''(II) the initial distribution of the materially altered motion picture to any exhibitor or retail provider; and

''(v) in the event of objections by an artistic author to any future material alterations, include or affix such objections to any copy of the motion picture distributed or transmitted to any exhibitor or retail provider.

''(B) Whenever a distributor or network exploits a motion picture which has already been materially altered, such distributor or network shall not be required to satisfy the requirements of subparagraph (A) (i), (ii), and (iii), if—

''(i) such distributor or network does not further materially alter such motion picture; and

''(ii) such motion picture was materially altered by another distributor or network that complied fully with all of the requirements of subparagraph (A).

''(C)(i) The requirement of a good faith effort under subparagraph (A)(i) is satisfied if a distributor or network that has not previously been notified by each artistic author of a motion picture—

''(I) requests in writing the name and address of each artistic author of the motion picture from the appropriate professional guild, indicating a response date of not earlier than 30 days after the date of the request, by which the appropriate professional guild must respond; and

''(II) upon receipt of such information from the appropriate professional guild within the time specified in the request, notifies each artistic author of the motion picture in a reasonable amount of time before the exploitation of the motion picture by such network or distributor.

''(ii) The notice to each artistic author under this paragraph shall contain a specific date, not earlier than 30 days after the date of such notice, by which the individual so notified shall respond in accordance with subparagraph (A)(ii). Failure of the artistic author or the appropriate professional guild to respond within the time period specified in the notice shall relieve the distributor or network of all liability under subparagraph (A).

''(D) The requirements of this paragraph for an exhibitor shall be limited to—

''(i) broadcasting, cablecasting, exhibiting, or distributing all labels required under this section in their entirety that are included with or distributed by the network or distributor of the motion picture; and

''(ii) including or affixing a label described in paragraphs (6) and (8) on a materially altered motion picture for any material alterations performed by the exhibitor to which any artistic author has objected under subparagraph (A)(iii).

''(E)(i) The provisions of this paragraph shall apply with respect to motion pictures intended for home use through either retail purchase or rental, except that no requirement imposed under this paragraph shall apply to a motion picture which has been packaged for distribution to retail providers before the effective date of this subsection.

''(ii) The obligations under this paragraph of a retail provider of motion pictures intended for home use shall be limited to including or distributing all labels required under this paragraph in their entirety that are affixed or included by a distributor or network.

''(F) There shall be no consideration in excess of one dollar given in exchange for an artistic author's waiver of any objection or waiver of the right to object under this subsection.

''(2)(A) Any artistic author of a motion picture that is exploited within the United States who believes he or she is or is likely to be damaged by a violation of this subsection may bring a civil action for appropriate relief, as provided in this paragraph, on account of such violation, without regard to the nationality or domicile of the artistic author.

''(B)(i) In any action under subparagraph (A), the court shall have power to grant injunctions, according to the principles of equity and upon such terms as the court deems reasonable, to prevent the violation of this subsection. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff, within 30 days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States—

''(I) may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found; and

''(II) shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

''(ii) When a violation of any right of an artistic author is established in any civil action arising under this subsection, the plaintiff shall be entitled to the remedies provided under section 35(a).

''(iii) In any action under subparagraph (A), the court may order that all film packaging of a materially altered motion picture (including film packages of motion pictures intended for home use through either retail purchase or rental) that is the subject of the violation shall be delivered up and destroyed.

''(C) No action shall be maintained under this paragraph unless—

''(i) the action is commenced within 1 year after the right of action accrues; and

''(ii) if brought by an artistic author designee, the action is commenced within the term of copyright of the motion picture.

''(3) Any disclosure requirements imposed under the common law or statutes of any State respecting the material alteration of motion pictures are preempted by this subsection.

''(4) To facilitate the location of a potentially aggrieved party, each artistic author of a motion picture may notify the copyright owner of the motion picture or any appropriate professional guild. The professional guilds may each maintain a Professional Guild Registry including the names and addresses of artistic authors so notifying them and may make available information contained in a Professional Guild Registry in order to facilitate the location of any artistic author for purposes of paragraph (1)(A). No cause of action shall accrue against any professional guild for failure to create or maintain a Professional Guild Registry or for any failure to provide information pursuant to paragraph (1)(A)(i).

''(5) As used in this subsection—

''(A) the term 'artistic author' means—

''(i) the principal director and principal screenwriter of a motion picture and, to the extent a motion picture is colorized or its photographic images materially altered, the principal cinematographer of the motion picture; or

''(ii) the designee of an individual described in clause (i), if the designation is made in writing and signed by the principal;

''(B) the term 'colorize' means to add color, by whatever means, to a motion picture originally made in black and white, and the term 'colorization' means the act of colorizing;

''(C) the term 'distributor'—

''(i) means any person, vendor, or syndicator who engages in the wholesale distribution of motion pictures to any exhibitor, network, retail provider, or other person who publicly performs motion pictures by means of any technology, and

''(ii) does not include laboratories or other providers of technical services to the motion picture, video, or television industry;

''(D) the term 'editing' means the purposeful or accidental removal of existing material or insertion of new material;

''(E) the term 'exhibitor' means any local broadcast station, cable system, airline, motion picture theater, or other person that publicly performs a motion picture by means of any technology;

''(F) the term 'exploit' means to exhibit publicly or offer to the public through sale or lease, and the term 'exploitation' means the act of exploiting;

''(G) the term 'film' or 'motion picture' means—

''(i) a theatrical motion picture, after its publication, of 60 minutes duration or greater, intended for exhibition, public performance, public sale or lease, and

''(ii) does not include episodic television programs of less than 60 minutes duration (exclusive of commercials), motion pictures prepared for private commercial or industrial purposes, or advertisements;

''(H) the term 'lexiconning' means altering the sound track of a motion picture to conform the speed of the vocal or musical portion of the motion picture to the visual images of the motion picture, in a case in which the motion picture has been the subject of time compression or expansion;

''(I) the terms 'materially alter' and 'material alteration'—

''(i) refer to any change made to a motion picture;

''(ii) include, but are not limited to, the processes of colorization, lexiconning, time compression or expansion, panning and scanning, and editing; and

''(iii) do not include insertions for commercial breaks or public service announcements, editing to comply with the requirements of the Federal Communications Commission (in this subparagraph referred to as the 'FCC'), transfer of film to videotape or any other secondary media preparation of a motion picture for foreign distribution to the extent that subtitling and editing are limited to those alterations made under foreign standards which are no more stringent than existing FCC standards, or activities the purpose of which is the restoration of the motion picture to its original version;

''(J) the term 'network' means any person who distributes motion pictures to broadcasting stations or cable systems on a regional or national basis for public performance on an interconnected basis;

''(K) the term 'panning and scanning' means the process by which a motion picture, composed for viewing on theater screens, is adapted for viewing on television screens by modification of the ratio of width to height of the motion picture and the selection, by a person other than the principal director of the motion picture, of some portion of the entire picture for viewing;

''(L) the term 'professional guild' means—

''(i) in the case of directors, the Directors Guild of America (DGA);

''(ii) in the case of screenwriters, the Writers Guild of America–West (WGA–W) and the Writers Guild of America–East (WGA–E); and

''(iii) in the case of cinematographers, the International Photographers Guild (IPG), and the American Society of Cinematographers (ASC);

''(M) the term 'Professional Guild Registry' means a list of names and addresses of

artistic authors that is readily available from the files of a professional guild;

''(N) the term 'publication' means, with respect to a motion picture, the first paid public exhibition of the work other than previews, trial runs, and festivals;

''(O) the term 'retail provider' means the proprietor of a retail outlet that sells or leases motion pictures for home use;

''(P) the term 'secondary media' means any medium, including, but not limited to, video cassette or video disc, other than television broadcast or theatrical release, for use on which motion pictures are sold, leased, or distributed to the public;

''(Q) the term 'syndicator' means any person who distributes a motion picture to a broadcast television station, cable television system, or any other means of distribution by which programming is delivered to television viewers;

''(R) the terms 'time compression' and 'time expansion' mean the alteration of the speed of a motion picture or a portion thereof with the result of shortening or lengthening the running time of the motion picture; and

''(S) the term 'vendor' means the wholesaler or packager of a motion picture which is intended for wholesale distribution to retail providers.

''(6)(A) A label for a materially altered version of a motion picture intended for public performance or home use shall consist of a panel card immediately preceding the commencement of the motion picture, which bears one or more of the following statements, as appropriate, in legible type and displayed on a conspicuous and readable basis:

'THIS FILM IS NOT THE VERSION ORIGINALLY RELEASED. _____ mins. and _____ secs. have been cut [or, if appropriate, added]. The director, _____ _____, and screenwriter, _____ _____, object because this alteration changes the narrative and/or characterization. It has (also) been panned and scanned. The director and cinematographer, _____ _____, object because this alteration removes visual information and changes the composition of the images. It has (also) been colorized. Colors have been added by computer to the original black and white images. The director and cinematographer object to this alteration because it eliminates the black and white photography and changes the photographic images of the actors. It has (also) been electronically speeded up (or slowed down). The director objects because this alteration changes the pace of the performances.'

''(B) A label for a motion picture that has been materially altered in a manner not described by any of the label elements set forth in subparagraph (A) shall contain a statement similar in form and substance to those set forth in subparagraph (A) which accurately describes the material alteration and the objection of the artistic author.

''(7) A label for a motion picture which has been materially altered in more than one manner, or of which an individual served as more than one artistic author, need only state the name of the artistic author once, in the first objection of the artistic author so listed. In addition, a label for a motion picture which has been materially altered in more than one manner need only state once, at the beginning of the label: 'THIS FILM IS NOT THE VERSION ORIGINALLY RELEASED.'.

''(8) A label for a film package of a materially altered motion picture shall consist of—

''(A) an area of a rectangle on the front of the package which bears, as appropriate, one or more of the statements listed in paragraph (6) in a conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package; and

''(B) an area of a rectangle on the side of the package which bears, as appropriate, one or more of the statements listed in paragraph (6) in a conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package.

''(9) The questionnaire required under paragraph (1)(A)(iii) shall consist of the following statement and related questions:

'In order to conform [insert name of motion picture], of which you are an ''artistic author'', to ancillary media such as television, airline exhibition, video cassettes, video discs, or any other media, do you object to:

'(a) Editing (purposeful or accidental deletion or addition of program material)?

Yes_____ No_____

'(b) Time compression/time expansion/lexiconning?

Yes_____ No_____

'(c) Panning and scanning?

Yes_____ No_____

'(d) Colorization, if the motion picture was originally made in black and white?

Yes_____ No_____'.''

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

By Mr. DASCHLE:

S. 560. A bill to amend section 6901 of title 31, United States Code, to entitle units of general local government to payments in lieu of taxes for nontaxable Indian land; to the Committee on Indian Affairs.

INDIAN LAND LEGISLATION

Mr. DASCHLE. Mr. President, today I introduce a bill to amend section 6901 of title 31, United States Code. This bill will provide payment in lieu of taxes to nontaxable Indian land that is conveyed to the ownership of an Indian or Indian tribe or to the United States in trust for an Indian or Indian tribe.

In 1976, Congress authorized a program to help compensate counties and units of local government for the loss of property taxes from the presence of tax-exempt Federal lands within their jurisdictions. This program, commonly referred to as payments in lieu of taxes, or PILT, is administered by the Bureau of Land Management. Payments are made for tax-exempt Federal lands administered by the BLM, Forest Service, National Park Service, U.S. Fish and Wildlife Service, and for Federal water projects and some military installations.

This amendment will provide compensation to local governments for lost revenue from land that is conveyed to an individual Indian or tribe and then converted to trust status. This amendment does not apply to Indian land that was not originally subject to property taxes or land converted to trust status prior to the enactment of this bill.

The purpose of the amendment is to provide a means for local governments to be compensated for the loss of revenue that results from the tax-exempt status of Indian land without discouraging individual Indians and tribes from converting recently purchased land holdings into trust status.

The additional PILT compensation will be minimal. Far more Indian land is converted from trust status to fee status. During the past 5 years, less than 1,000 acres have been converted to trust status in South Dakota.

This amendment is a fair and sensible approach to remedying an inequity effecting local governments in South Dakota and across the Nation.

Mr President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 560

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

SECTION 1. PAYMENTS IN LIEU OF TAXES FOR NONTAXABLE INDIAN LAND.

Section 6901 of title 31, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''means'' and inserting ''means—

''(A) land owned by the United States Government—'';

(B) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respectively, and adjusting the margins as appropriate; and

(C) by striking the period at the end, inserting a semicolon, and adding the following:

''(B) nontaxable Indian land.'';

(2) by redesignating paragraph (2) as paragraph (5); and

(3) by inserting after paragraph (1) the following:

''(2) 'Indian land' means land that is owned by an Indian or Indian tribe or by the United States in trust for an Indian or Indian tribe.

''(3) 'Indian tribe' means an Indian tribe, band, nation, pueblo, or other recognized group or community, including any Alaska Native Village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(4) 'nontaxable Indian land' means Indian land that—

''(A) on or after the date of enactment of this paragraph, is conveyed to the ownership of an Indian or Indian tribe or to the United States, in trust for an Indian or Indian tribe;

''(B) prior to the conveyance, was subject to taxation by a unit of general local government; and

''(C) under a provision of the Constitution of the United States or an Act of Congress, is not subject to taxation by the unit of general local government by reason of that ownership.''.

By Mr. CHAFEE:

S. 561. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION LEGISLATION

● Mr. CHAFEE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 561

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

SECTION 1. VESSEL DOCUMENTATION.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 App. U.S.C. 289), and section 12106 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel ISABELLE, United States official number 600655.●

By Mr. GRAMM (for himself and Mr. SHELBY):

S. 562. A bill to provide for State bank representation on the Board of Directors of the Federal Deposit Insurance Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE STATE BANK REPRESENTATION ACT

● Mr. GRAMM. Mr. President, our system of State and federally chartered banks has served Americans well over the years. Many of the bank products that are most popular with consumers were first developed by State banks.

Today, together with the chairman of the Financial Institutions Subcommittee, Senator SHELBY, I am introducing legislation to strengthen the dual banking system by providing for State bank representation on the board of Directors of the Federal Deposit Insurance Corporation [FDIC]. The FDIC Board currently is made up of five members: the Chairman of the FDIC, the Comptroller of the Currency, the Chairman of the Office of Thrift Supervision, and two independent members.

Mr. President, while the FDIC insures the deposits of both State and national banks, no one is seated at the table who can be counted on to present the perspective of State-chartered banks.

Decisions made and regulations issued by the FDIC have a powerful impact on banks, whether they have a State or national charter. We are in some degree, a dangerous degree, flying blind without having both elements of our dual banking system participating on the FDIC Board.

Our legislation contains several procedural safeguards. The bill would ensure that no one State would be favored over other States in serving on the FDIC Board. First of all, the State bank supervisor would be appointed to the Board by the President and confirmed by the Senate. Second, such a supervisor would serve for only 2 years and could not be reappointed. Neither could supervisors from the same State serve consecutive terms on the Board.

Finally, to ensure that it is the point of view of State bank supervisors that is being represented, should the individual while serving on the FDIC Board cease to be a State bank supervisor, then membership on the FDIC Board would also be lost. The President, in that case, would need to appoint another supervisor, with the advice and consent of the Senate, to serve for the remainder of the unexpired term. Such new appointment could be, but would not have to be, an individual from the same State as the individual originally appointed to that term.

As with the Comptroller of the Currency and the Chairman of the Office of Thrift Supervision, a State bank supervisor would receive no Federal salary for service as a member of the FDIC Board.

Mr. President, I believe that provision should have been made for a State bank supervisor on the FDIC Board when the Comptroller of the Currency was included on the Board. This legislation will rectify that oversight and bring about the balance that currently does not exist.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 562

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Bank Representation Act''.

SEC. 2. STATE BANK REPRESENTATION OF FDIC BOARD OF DIRECTORS.

(a) IN GENERAL.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended—

(1) by striking ''5 members'' and inserting ''6 members'';

(2) in subparagraph (B), by striking ''and'' at the end;

(3) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(D) 1 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals serving as State bank commissioners or supervisors (or the functional equivalent thereof) as of the date on which the appointment is made.''.

(b) LIMITATION.—Section 2(b) of the Federal Deposit Insurance Act (12 U.S.C. 1812(b)) is amended—

(1) in paragraph (1), by striking ''appointed members'' and inserting ''members appointed pursuant to subsection (a)(1)(C)''; and

(2) in paragraph (2), by striking ''appointed members'' and inserting ''members appointed pursuant to subsection (a)(1)(C)''.

(c) TERMS.—Section 2(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(c)(1)) is amended—

(1) by striking ''Each appointed member'' and inserting the following:

(A) IN GENERAL.—Each member appointed pursuant to subsection (a)(1)(C)''; and

(2) by adding at the end the following:

''(B) STATE BANK REPRESENTATIVES.—

''(i) IN GENERAL.—Except as provided in clause (ii), each member appointed pursuant to subsection (a)(1)(D) shall be appointed for a single term of 2 years.

''(ii) EXCEPTION.—If a member appointed pursuant to subsection (a)(1)(D) ceases to be a State banking commissioner or supervisor (or functional equivalent thereof) on a date prior to the expiration of the 2-year period described in clause (i), such member's membership on the Board of Directors shall terminate on that date.''.

(d) VACANCIES.—Section 2(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(1)) is amended—

(1) by striking ''Any vacancy'' and inserting the following:

''(A) IN GENERAL.—Subject to the restrictions contained in subparagraph (B), any vacancy''; and

(2) by adding at the end the following:

''(B) RESTRICTIONS.—

''(i) SAME INDIVIDUAL.—In filling a vacancy on the Board of Directors pursuant to subsection (a)(1)(D), the President may not appoint an individual who has previously served as a member of the Board of Directors pursuant to subsection (a)(1)(D).

''(ii) SAME STATE.—In filling a vacancy on the Board of Directors pursuant to subsection (a)(1)(D) (other than a vacancy occurring under subsection (c)(1)(B)(ii)), the President may not appoint an individual who is serving as the State bank commissioner or supervisor (or functional equivalent thereof) of the same State as the member most recently appointed pursuant to subsection (a)(1)(D).''.

(e) NONCOMPENSATION; TRAVEL EXPENSES.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended by adding at the end the following:

''(g) PERSONNEL MATTERS RELATING TO STATE BANK REPRESENTATIVES.—Members of the Board of Directors appointed pursuant to subsection (a)(1)(D)—

''(1) shall serve without compensation; and

''(2) shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board of Directors.''.

SUMMARY—STATE BANK REPRESENTATION ACT

1. Short title: ''State Bank Representation Act.''

2. Add another member to the FDIC Board of Directors, who would be a sitting state banking Supervisor or Commissioner (or the functional equivalent thereof), and who would be a full voting member.

3. This board member would be nominated by the President and confirmed by the Senate.

4. Remuneration would only be for expenses in connection with official duties as a board member; no salary.

5. Term of office would be two years. Such a board member may not be reappointed to the board for this particular seat, nor may a Supervisor from the same state serve for two consecutive terms on the board.

6. If during term of office as a member of the FDIC board the individual ceases to be a state banking Supervisor, then the person would also lose membership on the FDIC Board.●

By Mr. GREGG:

S. 563. A bill to amend the Internal Revenue Code of 1986 to treat recycling facilities as exempt facilities under the tax-exempt bond rules, and for other purposes; to the Committee on Finance.

THE ENVIRONMENTAL INFRASTRUCTURE FINANCING ACT OF 1995

● Mr. GREGG. Mr. President, I introduce the Environmental Infrastructure Financing Act of 1995. The bill will amend the Internal Revenue Code of 1986 to allow recycling facilities to be eligible for tax-exempt bond financing.

A continuing problem in the development of recycling efforts is the need for markets for the materials that are being collected. Processes exist for remanufacturing the recycled materials into new products, but they frequently require extensive capital investment.

An approach that is often attempted is the use of the Federal tax-exempt bond program, which does have a subcategory for solid waste projects. Solid waste recycling facilities should constitute a legitimate application of these funds; however, certain sections of the Tax Code define solid waste as being ''material without value.'' With recycled materials now being traded as commodities, they do, in fact, have value, making the facilities which might process them ineligible for tax-exempt financing. This definitional problem impedes the construction of recycling facilities and hurts the development of recycling materials markets.

My bill will correct this problem in the Tax Code and allow recycling facilities to obtain tax-exempt financing. The Environmental Infrastructure Financing Act of 1994 will foster the further development of the recycling industry and promote increased recycling.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 563

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Environmental Infrastructure Financing Act of 1995''.

SEC. 2. RECYCLING FACILITIES TREATED AS EXEMPT FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 of the Internal Revenue Code of 1986 (defining exempt facility bond) is amended by striking ''or'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', or'', and by adding at the end the following new paragraph:

''(13) qualified recycling facilities.''

(b) QUALIFIED RECYCLING FACILITIES DEFINED.—Section 142 of the Internal Revenue Code of 1986 (defining exempt facility bond) is amended by adding at the end the following new subsection:

''(k) QUALIFIED RECYCLING FACILITIES.—

''(1) IN GENERAL.—For purposes of subsection (a)(13), the term 'qualified recycling facilities' means any facility used exclusively—

''(A) to sort and prepare municipal, industrial, and commercial refuse for recycling, or

''(B) in the recycling of qualified refuse.

''(2) QUALIFIED REFUSE.—For purposes of this subsection, the term 'qualified refuse' means—

''(A) yard waste,

''(B) food waste,

''(C) waste paper and paperboard,

''(D) plastic scrap,

''(E) rubber scrap,

''(F) ferrous and nonferrous scrap metal,

''(G) waste glass,

''(H) construction and demolition waste, and,

''(I) biosolids (sewage sludge).

(3) RECYCLING.—For purposes of this subsection, the term 'recycling' includes either—

''(A) processing (including composting) qualified refuse to a point at which such refuse has commercial value; or

''(B) manufacturing products from qualified refuse when such refuse constitutes at least 40 percent, by weight or volume, of the total materials introduced into the manufacturing process.

''(4) SPECIAL RULE.—Refuse shall not fail to be treated as waste merely because such refuse has a market value at the place such refuse is located only by reason of the value of such refuse for recycling.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.●

By Mr. BIDEN:

S. 564. A bill to confer and confirm Presidential authority to use force abroad, to set forth principles and procedures governing the exercise of that authority, and thereby to facilitate cooperation between the President and Congress in decisions concerning the use or deployment of U.S. Armed Forces abroad in situations of actual or potential hostilities.

USE OF FORCE ACT

Mr. BIDEN. Mr. President, I rise today to introduce a piece of legislation that I worked on for the last several years. As time has passed, I believe my arguments for the legislation in the first instance are even more relevant today than they were then.

This legislation will replace the War Powers Resolution of 1973, and it is designed to provide a framework for joint congressional-Executive decisionmaking about the most solemn decision that a nation can make: to send women and men to fight and die for their country.

Decades ago, a noted scholar, Edwin Corwin, characterized constitutional provisions regarding the foreign policy of the Nation as an invitation to struggle—a struggle between the executive branch and the legislative branch.

Professor Corwin's maxim accurately describes over 200 years of constitutional history—two centuries of tension between the executive and the legislative branches regarding the war power.

But over the past four decades, what was intended as a healthy struggle between the executive and legislative branches has become an extremely excessively divisive and chronically debilitating struggle.

The primary cause, in my view, is that Presidents have pushed the limits of Executive prerogative, Democratic Presidents as well as Republican Presidents. Their rationale has been the supposed burden of Presidential responsibility imposed by the stresses and dangers of the cold war.

The era began in 1950, when President Truman deployed forces to defend South Korea without any congressional authorization.

With elaborate legal argument, Truman asserted an inherent Presidential authority to act unilaterally to protect the broad interests of American foreign policy.

A nearly lone voice of concern, Senate minority leader—Mr. Republican—Robert Taft—known, as I said, as Mr. Republican—declared that the President had usurped authority, in violation of the laws and the Constitution.

But Taft's pronouncements availed him little, a fate that would often befall similar Executive attempts to restrain Executive aggrandizement.

The dissenters were overwhelmed by the proponents of a thesis: The thesis that in the nuclear age—when the fate of the planet itself appeared to rest with two men thousands of miles apart—Congress had little choice, or so it was claimed, but to cede tremendous authority to the Executive.

By the beginning of the 1970's, that thesis had become doctrine.

In 1970, when President Nixon sent United States forces into Cambodia with neither congressional authorization nor even consultation, his accompanying assertions of autonomous Presidential powers were so sweeping and so extreme that the Senate began a search—a search led by Republican Senator Jacob Javits and strongly supported by Democratic Senator and hawk John Stennis—the Senate began a search for some means of rectifying what was now perceived as a dangerous constitutional imbalance in favor of the Executive.

The result was the enactment, in 1973—my first year in the U.S. Senate—of the War Powers Resolution over a Presidential veto.

Today, over two decades later, few would dispute that the War Powers Resolution has failed to fulfill its intent and has been, to state it quite simply, ineffective.

It is commonly said that every President has disputed the constitutionality of the War Powers Act, but that is not wholly true. President Ford took no issue with the act while he was in office.

And President Carter explicitly vowed to comply with its provisions, declaring that he would neither endorse nor challenge its constitutionality.

Moreover, the Carter Justice Department conducted a detailed analysis of the resolution and declared, quite explicitly, that its most critical mechanism—the timetable for congressional authorization of use of force abroad—is fully and unambiguously constitutional.

Unfortunately, under the Ford and Carter administrations, no body of practice under the resolution developed, because the only two military actions of that period—the *Mayaguez* incident under President Ford and Desert One under President Carter—were over almost before they began.

Then came President Reagan and President Bush, who dealt with the resolution pragmatically while declaring their blanket opposition to its provisions.

Their assertion of the doctrine of broad Executive powers—what I call the monarchist viewpoint—is best exemplified by President Bush's statement on the eve of the gulf war.

With half a million American forces standing ready in Saudi Arabia, President Bush petulantly declared that he did not need permission from some old goat in the Congress to kick Saddam out of Kuwait.

Although Mr. Bush eventually sought congressional support in the gulf, he did so reluctantly, and continued to assert that he sought only support, refusing to concede that congressional authorization was a legal necessity.

More recently, the notion of broad Executive power was claimed on the eve of the invasion of Haiti—an invasion that, thankfully, was averted by a last-minute diplomatic initiative.

Last summer, Clinton administration officials characterized the Haiti operation as a mere police action, a semantic dodge designed to avoid the need for congressional authorization.

Some of my Democratic colleagues suggested that the war clause of the Constitution was entirely ceremonial and that the President had virtually unlimited discretion to order an invasion of Haiti. These were some of the same Democrats who stood here on the floor and said President Bush did not have the authority to act in the gulf without congressional assent; proving the axiom that Senators and Congressmen tend to pick what side of their issue they are on depending on the partisan need.

We have the interesting phenomena, Republicans on the floor who said there was a broad range of congressional authority, but when it came to Clinton exercising it, saying, no, he did not have the authority; and Democrats who were on the floor telling President Bush he did not have the authority but saying, no, President Clinton does. To be sure, there were some of my Republicans and Democratic friends who were consistent—who may have questioned the President's policy in Haiti but did not question the right to deploy those troops in the absence of congressional consent.

In my view, the assertions expressed during the Haitian crisis underscore that the doctrine asserted by President Nixon 25 years ago still grips the executive branch. More alarming, the congressional viewpoints I summarized suggest that the legislative surrender of the war power continues, based in part on whether or not the man or woman in power is a man of your party and whether you agree with him on the substance of the action.

With all respect to my colleagues and the administration, I believe this President, the last President, and the Presidents under whom I have served have misread the Constitution. Article I, section 8, clause 11, grants to the Congress the power ''To declare War, grant Letters of Marque and Reprisal and make Rules concerning Captures on Land and Water.''

To the President, the Constitution provides in article II, section 2, the role of ''Commander in Chief of the Army and Navy of the United States.'' It may fairly be said that with regard to many constitutional provisions, the framers' intent was ambiguous, but not on the war power. Both the contemporaneous evidence and the early construction of these clauses, in my view, do not leave much room for doubt.

The original draft of the U.S. Constitution would have given the Congress the power to ''make war.'' At the Constitutional Convention in Philadelphia, a motion was made to change to ''make war,'' to ''declare war.''

The reason for the change is very instructive. At the convention, James Madison and Elbridge Gerry argue for an amendment solely in order to permit the President the power ''to repel sudden attacks.'' They were fearful if you said it was the power of the Congress to make war, that could be read to deny the President the authority without congressional power to repel sudden attacks.

Just one delegate at the convention, Pierce Butler of South Carolina, suggested that the President should be given the power to initiate war. All others disagreed. Only one to suggest that the President had the power to initiate war. The rationale for vesting the power to launch war in the U.S. Congress was quite simple: The framers knew their history. The framers' thoughts were dominated by their experience with the British king who had unfettered power to start wars and spend the treasure and blood of his nation. Such powers the framers were determined to deny the President of the United States.

George Mason, for example, explained that he was opposed to giving the power to initiate war to the President because the President, the Executive, he believed, was not to be safely trusted with that power. Even Alexander Hamilton, a staunch advocate of Presidential power, emphasized that the President's power as Commander in Chief would be ''much inferior'' to the British kings, amounting to ''nothing more than the supreme command and direction of the military and naval forces,'' while that of the British king ''extends to the declaring of war and the raising and regulation of fleets and armies—all which [by the U.S.] Constitution would appertain to the legislature.''

It is frequently contended by those who favor vast Presidential powers that Congress was granted only ceremonial power to declare war, in effect, a designation to provide fair notice to the opposing States, and legal notice to neutral parties. At least that is what they argue.

But the framers had little interest, it seems, in the ceremonial aspects of war. The real issue was congressional authorization of war. As Hamilton noted in Federalist 25, ''The ceremony of a formal denunciation of war has of late fallen into disuse.'' Indeed, by one historian's account, just 1 war in 10 was formally declared in the years between 1700 and 1870—1 in 10.

The proposition that Congress had the power to initiate all wars except to repel attack on the United States is also strengthened in view of the second part of the war clause. That is the power to ''grant Letters of Marque and Reprisal.''

Now, most Americans, I daresay most Members of Congress, I daresay most members of Government, do not even know what the ''power to grant Letters of Marque and Reprisal'' means and why it is in the Constitution. An anachronism today, letters of marque and reprisals were licenses issued by governments, usually to private citizens, but on occasion to government agents, empowering these private citizens or government agents to seize enemy ships or take action on land, short of all-out war.

In essence, it was the 18th century version of what we now regard as limited war or police actions. That is what letters of marque and reprisal were. If you are having trouble with pirates off the coast, you are not looking to declare war. The Federal Government, in this case the Congress, could go out and hire out, give permission to, give a letter of marque and reprisal to a local. Think of it in terms of a local security agency that comes by and patrols your neighborhoods. You could give letters of marque or reprisal and say, ''You are authorized under the law, through the Congress, to go seize those pirate ships.''

That is what it was about. A leading commentator of the day—that is, the late 1700's—a leading commentator of the day on international law explained the distinction this way: ''A perfect war is that which entirely interrupts the tranquility of the state. An imperfect war, on the contrary, is that which does not entirely interrupt the peace. Reprisals are that imperfect kind of war.''

So, when we hear people talk about imperfect wars, it is used as a term of art as it was used back in the late 1700's. The framers undoubtedly knew that reprisals or imperfect wars could lead to general or all-out wars. England, for example, had fought five wars between 1652 and 1756 which were preceded by public naval reprisals.

That is, if you gave these letters of marque to someone or a group of people to go out and seize shipping, it was acknowledged that that could lead to a larger war. If the nation from which those ships came decided that it was not in their interest, they may very well send a larger armada and you are at war. You move from that imperfect war to the so-called perfect war—an odd phrase, ''perfect war.''

Surely, those who met at Philadelphia, all learned men, knew and understood this history of marque and reprisals. Given this understanding, the only logical conclusion that the framers intended by vesting the power to grant these letters of marque and reprisal authorizing imperfect war in the Congress, could be that it was designed to grant to Congress the power to initiate all hostilities, even limited wars.

To review for a second, they changed from ''make'' to ''declare'' in the Constitution for the purpose of allowing the President not to initiate a war, perfect or imperfect, large or small, but for the purpose of allowing the President to respond to a sudden attack.

Then to be sure everyone understood what they meant, they said, ''And by the way, we are going to vest in the section of the Constitution that relates to congressional power the exclusive power to the Congress of issuing these letters of marque and reprisal.''

So they not only said Congress can only initiate war and the President can only respond, but even limited war only the Congress can initiate.

A comparison of the war clause to related constitutional provisions suggest that this interpretation is the correct one. Unlike other foreign affairs provisions in the Constitution which grant to the President and the Senate the shared power to make treaties and appoint ambassadors, when it comes to the war power the Constitution provides a role for the Senate and the House of Representatives—but not a shared responsibility between the branches.

The inclusion of the House, in particular, suggests a determination to mandate that public consensus be achieved before the initiation of a war.

Think about it. If the Founders thought that they should not give the power to raise taxes to the Senate because we were more like the House of Lords, and that all taxes must be initiated in the House of Representatives, why did they do that? They did that because they knew that taxation could affect people's lives so drastically that it should be a democratic decision and it should be made first and foremost in the people's house, that group of legislators who stand for election every 2 years and are immediately answerable to the public.

If they thought it was so important and so critical that taxes should be determined by the people's house because it had such an impact on the lives of the average citizen, what do you think they thought about the power of a Government to take your son or daughter and send them to war and die? It is illogical to me, and those who say that the President has this exclusive authority, to suggest that they would worry about taxation but not worry about taking a nation to war, which can cost them their lives, their monetary treasure, their lifeblood.

The inclusion of the House in the decision to go to war was because the House was designed to be closely attuned to the views of the Nation and thereby would provide a means for gauging and ensuring public support for any war.

Moreover, with both Chambers involved in the decision to go to war, the initiation of war could necessarily be slowed by the simple fact that securing passage of statutory authorization or a declaration of war through both Houses is potentially a time-consuming and cumbersome process. That is what it was intended to be, because when one goes to war, you cannot say, short of surrender, 2 weeks into it or 1 month into it, ''By the way, we made a mistake, we're passing legislation to correct it.'' You can do that with taxes. You can pass a tax bill and 2 months later, 3 months later say, ''We made a mistake and rescind it.'' You do not rescind a war.

So it was intended—it was intended—in the Constitution that decision to go to war—not to repel attack, to go to war—to initiate war, to alter the state of peace, it was intended that it should be a process that consumed some time.

It is bordering on the irrational, in my view, to suggest that the framers thought the appointment of ambassadors, although an important task, but not of the same consequence as war, that the appointment of ambassadors was so critical that they gave the Senate a veto power over it, but they considered the war powers so trivial that the decision to send Americans to fight and die was left deliberately vague so as to permit the Executive reasonable discretion to launch hostilities at his or her whim.

I think that is irrational for anyone to think that is what the Framers thought, that who we have as Ambassador to England is so important that we are not going to leave it to a President alone, we are going to require the Senate to go along with it, but going to war with England was so trivial that we did not have to consult the United States Senate or did not have to consult the people's House before a President could take us to war. That is, in my humble opinion, an irrational view.

In the same vein, I am continually amazed that many of my colleagues who zealously guard the Senate's power to advise and consent to treaties and to ambassadorial appointments, so cavalierly cede the war power to the Executive. I find that fascinating. What more can impact on the life of the average American than taking the Nation to war? Why would they possibly have left that to the President alone but said, ''By the way, when you want to stop a war, when you want to have a treaty, the President has no authority to do that. He has to come to us and get a supermajority.''

Does that make any sense? Talk about tortured logic. Yet, we have people on this floor, in the 22 years I have been here—and when I got here, the Vietnam war was still going on; that is one of the reasons I ran for the Senate in the first place—we have Members in both political parties with whom I have served and have great respect saying, ''War is up to the President, but who the Ambassador is, you better check with me.'' War is up to the President. But whether there is a peace treaty, you better check with me.

I would respectfully suggest the reason that many have adopted that position is they do not have the political courage to take a stand on whether or not we should go to war.

In sum, to accept the proposition that the war power is merely ceremonial, or applies only to big wars, is to read much of the war clause out of the U.S. Constitution. And such a reading is supported neither by the plain language of the text or the original intention of the Framers of the Constitution.

In describing the Framers' intent, I hasten to add a caveat. We should always be cautious about our ability to divine the intentions of those who came 200 years before us, particularly when the documentary record is not at all voluminous.

But any doubt about the wisdom of relying on original intent alone, in my view, is dispelled in view of the actions of the early Presidents, early Congresses, and early Supreme Court decisions.

EARLY PRACTICE—SHEDDING LIGHT ON THE FRAMERS' INTENT

Let me speak to that a minute. Advocates of Executive power often assert that Presidents have used force throughout our history without congressional consent. But with all due respect, history does not support that claim.

Indeed, our earliest Presidents, who were involved in the ratification of the Constitution, were extremely cautious about encroaching on Congress' power under the war clause.

Our first President, George Washington, adhered to the view that only Congress could authorize offensive action. Writing in 1793, President Washington stated that offensive operations against an Indian tribe, the Creek Nation, depended on congressional action alone.

Let me quote from what Washington wrote. Washington as President said:

> The Constitution vests the power of declaring war with the Congress; therefore, no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure.

That was George Washington.

During the Presidency of John Adams, the United States engaged in an undeclared naval war with France. These military engagements were clearly authorized by the Congress in a series of incremental statutes.

The naval war with France also yielded three important Supreme Court decisions regarding the scope of the war power.

In 1799, Congress authorized the President to intercept any United States vessel headed to France. President Adams subsequently ordered the Navy to seize any ship traveling to or from France. The Supreme Court declared the seizure of a United States vessel traveling from France to be illegal, thus ruling that Congress had the power not only to authorize limited war but also to limit Presidential power to take military action.

The Court ruled in two other cases bearing on the question of limited war. Wars, the Court said, even if ''imperfect,'' are nonetheless wars.

In still another case, Chief Justice Marshall opined that:

> The whole powers of war [are] by the Constitution . . . vested in the Congress . . . [which] may authorize general hostilities . . . or partial war.

Now, modern monarchists, those who lean and tilt so far to the President on this, refer habitually to the actions of our third President, Thomas Jefferson, in coping with the Barbary pirates. But Jefferson's actions provide little solace to advocates of that position.

In May of 1801, President Jefferson deployed a small squadron of ships to the Mediterranean to deter attacks against American shipping. Acting under the authority of an act of Congress which mandated that six frigates be maintained in the Navy during peacetime, Jefferson instructed the naval commander that if he arrived and found that the Barbary powers had declared war against the United States, to take action if necessary ''to protect commerce.''

But when he learned that the leader of Tripoli had, in fact, declared war, Jefferson referred the matter to the Congress.

Reporting on a small skirmish won by a U.S. ship, Jefferson noted that the American ship was authorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, and thus the U.S. commander did not take possession of the ship or retain its crew as prisoners of war.

Jefferson sought further guidance from Congress about the next step, and I quote:

> The legislature will doubtless consider whether, by authorizing measures of offence also, [Congress] will . . . place our forces on an equal footing [with the Tripolitan forces].

Congress promptly enacted a statute empowering Jefferson to protect U.S. shipping, and to seize vessels owned by the Tripoli regime. The legislation passed 2 years later gave explicit support for ''warlike operations against Tripoli or other Barbary powers.''

I believe this episode, and the historical record of actions taken by other early Presidents, has significantly more bearing on the meaning of the war clause than the record of Presidents in the modern era.

The reasons should be obvious. The men who were at Philadelphia and wrote the Constitution—or, as in Jefferson's case, participated in the ratification debates in the States—had a much better understanding of the intended meaning of the constitutional provisions than those of us 200 years later have. They participated.

Their actions while in office should, therefore, be given great weight in interpreting the constitutional clauses in question. As Chief Justice Warren once wrote, ''The precedential value of [prior practice] tends to increase in proportion to the proximity'' to that Constitutional Convention.

RESTORING THE CONSTITUTIONAL BALANCE

Unfortunately, this constitutional history seems largely forgotten, and the doctrine of Presidential power that arose during the four decades of the cold war continues to remain in vogue—even, to my dismay, among many of my colleagues in the Congress.

To accept this situation requires us to believe that the constitutional imbalance serves our Nation well. But it can hardly be said that it does.

As matters now stand, Congress is denied its proper role in sharing the decision to commit American troops, and the President is deprived of the consensus he needs to help carry that policy through.

Only by establishing an effective war powers mechanism can we ensure that both of these goals are met. More importantly, we will guarantee that the will of the American people will stand behind the commitment of U.S. forces.

The question then is this: How to revise the War Powers Resolution in a manner that gains bipartisan support as well as the support of the Executive?

In the past two decades, a premise has gained wide acceptance that the War Powers Resolution is fatally flawed. Indeed, there are flaws in the resolution, but they need not have been fatal.

For that law was designed—by legislators who were statesmen of a markedly conservative stripe—to embody constitutional principles and to set forth practical procedures.

Ironically, a law designed to improve executive-legislative branch comity on the war power has instead contributed to frequent squabbles about the minutiae of the law's provisions.

In 1988, determining that a review of the War Powers Resolution was in order, the Foreign Relations Committee established a special subcommittee to assume the task.

As chairman of the subcommittee, I conducted an exhaustive series of hearings, the most extensive hearings held in recent times on this subject.

Over the course of 2 months, the subcommittee heard from many distinguished witnesses: Former President Ford, former Secretaries of State and Defense, former Joint Chiefs of Staff, former Members of Congress who drafted the law, and many constitutional scholars.

At the end of that process, I produced a lengthy law review article describing how the War Powers Resolution might be thoroughly rewritten to overcome its actual and perceived liabilities.

I envisaged its replacement by a new act entitled ''The Use of Force Act''—which would aim to achieve, at long last, the goal of its predecessor: To restore the balance of power between the executive and legislative branches regarding the war power for purposes of complying with the intent and will of the American people as well as the Constitution.

That effort provided the foundation for the legislation I introduce today. The bill that I offer has many elements; I will briefly summarize the most important.

First, it bears emphasis that my bill would replace the War Powers Resolution with a new version. But I should make clear that I retain its central element: A time-clock mechanism that limits the President's power to use force abroad.

That mechanism, I should repeat, was found to be unambiguously constitutional in a 1980 opinion issued by the Office of Legal Counsel at the Department of Justice.

It is often asserted that the time-clock provision is unworkable, or that it invites our adversaries to make a conflict so painful in the short run so as to induce timidity in the Congress, forcing the President to remove troops.

But with or without a war powers law, American willingness to undertake sustained hostilities will always be subject to democratic pressures. A statutory mechanism is simply a means of delineating procedure.

And the procedure set forth in this legislation assures that if the President wants an early congressional vote on a use of force abroad, his congressional supporters can produce it.

Recent history tells us, of course, that the American people, as well as Congress, rally around the flag—rally around the President—rally around the Commander in Chief—in the early moments of a military deployment.

Second, my bill defuses the specter that a timid Congress can simply sit on its hands and permit the authority for a deployment to expire.

As noted above, it establishes elaborate expedited procedures designed to ensure that a vote will occur. And it explicitly defeats the timid Congress specter by granting to the President the authority he has sought if these procedures nonetheless fail to produce a vote.

Thus, if the President requests authority for a sustained use of force—one outside the realm of emergency—

and Congress fails to vote, the President's authority is extended indefinitely.

Third, the legislation delineates what I call the going-in authorities for the President to use force.

One fundamental weakness of the War Powers Resolution is that it fails to acknowledge powers that most scholars agree are inherent Presidential powers, such as the power to repel an armed attack upon the United States or its Armed Forces, or to rescue Americans abroad.

My legislation corrects this deficiency—and thus avoids the endless dispute over where the exact location of the line between what the President already possesses independently and what Congress was bestowing upon him by legislation—where that line rests.

The bill enumerates five instances where the President may use force:

First, to repel attack on U.S. territory or U.S. forces;

Second, to deal with urgent situations threatening supreme U.S. interests—i.e. the Cuban missile crisis;

Third, to extricate imperiled U.S. citizens;

Fourth, to forestall or retaliate against specific acts of terrorism; and

Fifth, to defend against substantial threats to international sea lanes or airspace.

It may be that no such enumeration can be exhaustive. But it is worth noting that the circumstances set forth would have sanctioned virtually every use of force by the United States since World War II.

This concession of authority is circumscribed by the maintenance of the time-clock provision. After 60 days have passed—2 months—the President's authority would expire, unless 1 of 3 conditions had been met:

First, Congress has declared war or enacted specific statutory authorization; or

Second, the President has requested authority for an extended use of force but Congress has failed to act on that request, notwithstanding the expedited procedures established by this act—that is, Congress, if he asks to continue the force must act to tell him he cannot or it is presumed he can continue—or;

Third, the President has certified the existence of an emergency threatening the supreme national interests of the United States; in which case he can continue the force in place.

The legislation also affirms the importance of consultation between the President and Congress and establishes a new means to facilitate that consultation.

To overcome the common complaint that Presidents must contend with ''535 secretaries of state''—that is 535 Members of Congress—the Use of Force Act establishes a congressional leadership group with whom the President is mandated to consult on the use of force.

Another infirmity of the War Powers Resolution is that it fails to define ''hostilities.'' Thus, Presidents frequently engaged in a verbal gymnastics of insisting that ''hostilities'' were not ''imminent.'' Even when hundreds of thousands of troops were positioned in the Arabian desert opposite Saddam's legions, President Bush argued that they were not in an area of hostilities and, even if they were, there was no prospect of imminent hostilities. Therefore the War Powers Act would not be triggered and engaged.

Therefore, my legislation includes a more precise definition of what constitutes the use of force. And this definition contains two elements:

First, a new commitment of U.S. forces, and second, the deployment is aimed at deterring a specific threat, the forces deployed have incurred or inflicted casualties, or are operating with a substantial possibility of incurring or inflicting casualties.

If those conditions are met then there is a use of force as defined in the law.

Finally, to make the statutory mechanism complete, the Use of Force Act provides a means for judicial review.

Like many of my colleagues, I am reluctant to inject the judiciary into decisions that should be made by the political branches. Therefore, the provision is extremely limited: It empowers a three-judge panel to decide only whether the time-clock mechanism has been triggered.

I have no illusions that enacting this legislation will be easy. The experience of the War Powers Resolution gives witness to the difficulty of finding the proper balance between the executive and legislative branches on war powers.

But I am determined to try. The status quo, with Presidents asserting broad executive powers, and Congress often content to surrender its constitutional powers, serves neither branch, and clearly does not serve the American people.

More fundamentally, it does not serve the men and women who risk their lives to defend our interests. For that, ultimately, must be the test of any war powers law.

Mr. President, some would argue now that the cold war is over there is less need for this delineation of authority, this new set of ground rules. I would argue nothing could be further from the truth. We are more likely to be pulled into hostilities—although not a world war III in all probability. More Americans have been engaged in areas of hostility, have been killed, and have been put on the battlefield since the cold war has ended than all during the cold war but for Korea and Vietnam, in little parts of the world all over the world: Bosnia, Somalia, and Haiti. What happens in a decade, a year from now—in the Ukraine, Byelarus, Russia—or any number of places where there might be hostilities and Americans or entire divisions of Americans may be called to action?

So, Mr. President, I think to have an ordered plan to diminish the bickering between the executive and legislative branches on this issue is more needed today than it has been at any time.

Mr. President, I ask unanimous consent that the text of the bill that I have sent to the desk and the accompanying section-by-section analysis be included in the RECORD at this point.

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

S. 564

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Use of Force Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. CONGRESSIONAL FINDINGS.

The Congress affirms that—

(1) the provisions of the United States Constitution compel the President and Congress to engage actively and jointly in decisions to use force abroad;

(2) joint deliberation by the two branches will contribute to sound decisions and to the public support necessary to sustain any use of force abroad; and

(3) a statutory framework, devised to promote consultation and timely authorization as may be needed for specific uses of force, can facilitate cooperation between the Congress and the President in such decisionmaking.

SEC. 4. STATEMENT OF PURPOSE.

(a) IN GENERAL.—The purpose of this Act is to confer and confirm Presidential authority to use force abroad, to set forth principles and procedures governing the exercise of that authority, and thereby to facilitate cooperation between the President and Congress in decisions concerning the use or deployment of United States Armed Forces abroad in situations of actual or potential hostilities.

(b) EXCLUSIVITY OF PROVISIONS.—Because this Act confirms all of the President's inherent constitutional authority to use force abroad and confers additional authority, this Act applies to all uses of force abroad by the United States.

SEC. 5. DEFINITIONS.

As used in this Act—

(1) a ''use of force abroad'' occurs when—

(A) United States Armed Forces are—

(i) introduced into a foreign country,

(ii) deployed to expand significantly the United States military presence in a foreign country, or

(iii) committed to new missions or objectives in a foreign country, or in international airspace, or on the high seas; and

(B) such forces—

(i) have been deployed to deter an identified threat, or a substantial danger, of military action by other forces; or

(ii) have incurred or inflicted casualties or are operating with a substantial possibility of incurring or inflicting casualties;

(2) the term ''foreign country'' means any land outside the United States, its territorial waters as recognized by the United States, and the airspace above such land and waters;

(3) the term ''high seas'' means all waters outside the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

(4) the term ''international terrorism'' means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping; and

(C) transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum;

(5) the term ''United States'' means the several States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and any other possession of the United States; and

(6) the term ''Use of Force Report'' means the report described in section 103(a).

TITLE I—GENERAL PROVISIONS

SEC. 101. AUTHORITY AND GOVERNING PRINCIPLES.

(a) AUTHORITY.—In the absence of a declaration of war or statutory authorization for a specific use of force, the President, through powers vested by the Constitution of the United States and by this Act, is authorized to use force abroad in accordance with this Act—

(1) to repel an armed attack upon the United States or its armed forces;

(2) to respond to a foreign military threat that severely and directly jeopardizes the supreme national interests of the United States under emergency conditions that do not permit sufficient time for Congress to consider statutory authorization or a declaration of war;

(3) to extricate citizens and nationals of the United States located abroad from situations involving a direct and imminent threat to their lives;

(4) to forestall an imminent act of international terrorism directed at citizens or nationals of the United States or to retaliate against the perpetrators of a specific act of international terrorism directed at such citizens or nationals; and

(5) to protect internationally recognized rights of innocent and free passage in the air and on the seas in circumstances where the violation, or threat of violation, of such rights poses a substantial danger to the safety of American citizens or the national security of the United States.

(b) GOVERNING PRINCIPLES.—In exercising the authority set forth in subsection (a), the President shall, without limitation on the constitutional power of Commander in Chief, adhere rigorously to principles of necessity and proportionality, as follows:

(1) PRINCIPLES OF NECESSITY:

(A) Force may not be used for purposes of aggression.

(B) Before the use of force abroad, the President shall have determined, with due consideration to the implications under international law, that the objective could not have been achieved satisfactorily by means other than the use of force.

(2) PRINCIPLES OF PROPORTIONALITY:

(A) The use of force shall be exercised with levels of force, in a manner, and for a duration essential to and directly connected with the achievement of the objective.

(B) The diplomatic, military, economic, and humanitarian consequences of such action shall be in reasonable proportion to the benefits of the objective.

SEC. 102. CONSULTATION.

(a) PRIOR CONSULTATION REQUIRED.—Except where an emergency exists that does not permit sufficient time to consult Congress, the President shall seek the advice of the Congress before any use of force abroad.

(b) CONGRESSIONAL LEADERSHIP GROUP.—(1) To facilitate consultation between the President and the Congress, there is established within the Congress the Congressional Leadership Group on the Use of Force Abroad (hereafter in this Act referred to as the ''Congressional Leadership Group'').

(2) The Congressional Leadership Group shall be composed of—

(A) the Speaker of the House of Representatives and the President pro tempore of the Senate;

(B) the Majority Leader and the Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representatives;

(C) the chairman and ranking minority member of each of the following committees of the Senate: the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence; and

(D) the chairman and ranking minority member of each of the following committees of the House of Representatives: the Committee on International Relations, the Committee on National Security, and the Permanent Select Committee on Intelligence.

(3) The Speaker of the House of Representatives and the Majority Leader of the Senate shall each serve as co-chairman of the Congressional Leadership Group.

(c) REGULAR CONSULTATIONS.—(1) Except as the parties may otherwise determine, whenever Congress is in session, meetings shall be held, in open or closed session, for the purpose of facilitating consultation between Congress and the President on foreign and national security policy, as follows:

(A) The President shall meet at least once every four months with the Congressional Leadership Group.

(B) The Secretary of State shall meet at least once every two months with the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(C) The Secretary of Defense shall meet at least once every two months with the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.

(D) The Director of Central Intelligence shall meet at least once every two months with the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Such consultation shall have, among its primary purposes—

(A) identifying potential situations in which the use of force abroad might be necessary and examining thoroughly the advisability and lawfulness of such use of force; and

(B) in those instances in which a use of force abroad has already been undertaken, discussing how such use of force complies with the objectives and the authority required to be cited in the appropriate Use of Force Report and the governing principles set forth in section 101(b).

(d) EMERGENCY CONSULTATIONS.—Under emergency circumstances affecting United States national security interests, the President should meet promptly with the Congressional Leadership Group on his own initiative or upon receipt of a special request from its co-chairmen that is made on their own initiative or pursuant to a request from a majority of the members of the Congressional Leadership Group.

SEC. 103. REPORTING REQUIREMENTS AND REFERRAL OF REPORTS.

(a) USE OF FORCE REPORT REQUIRED.—Not later than 48 hours after commencing a use of force abroad, the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report stating—

(1) the objective of such use of force;

(2) in the absence of a declaration of war or specific statutory authorization for such use of force, the specific paragraph or paragraphs of section 101(a) setting forth the authority for such use of force; and

(3) the manner in which such use of force complies, and will continue to comply with, the governing principles set forth in section 101(b).

Any such report shall be known as a Use of Force Report and shall state that it is submitted pursuant to this subsection.

(b) PERIODIC REPORTING REQUIRED.—Whenever force is used abroad, the President shall, so long as the United States Armed Forces continue to be involved in the use of force, report to Congress periodically on the status, scope, and expected duration of such use of force. Such reports shall be submitted at intervals to be determined jointly by the President and the Congressional Leadership Group.

(c) REFERRAL OF REPORTS.—Each report transmitted under this section shall be immediately referred to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(d) RECONVENING CONGRESS.—If, when a report is transmitted under this section, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the Majority Leader of the Senate, if they deem it advisable (or if petitioned by a majority of the members of the Congressional Leadership Group or by 30 percent of the membership of either House of Congress) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this Act.

SEC. 104. CONDITIONS FOR EXTENDED USE OF FORCE.

The President may continue a use of force abroad for longer than 60 calendar days after the date by which the appropriate Use of Force Report is required to be submitted only if—

(1) Congress has declared war or provided specific statutory authorization for the use of force abroad beyond such period;

(2) the President has requested that Congress enact a joint resolution constituting a declaration of war or statutory authorization under section 105(a) but such joint resolution has not been subject to a vote in each House of Congress, notwithstanding the expedited procedures to which such joint resolution would be entitled; or

(3) the President has determined and certified to the Speaker of the House of Representatives and the President pro tempore of the Senate that an emergency exists that threatens the supreme national interests of the United States and requires the President to exceed such period of limitation.

SEC. 105. MEASURES ELIGIBLE FOR CONGRESSIONAL PRIORITY PROCEDURES.

(a) ELIGIBLE JOINT RESOLUTIONS.—A joint resolution shall be entitled to the expedited procedures set forth in section 201—

(1) if such resolution—

(A) is introduced in a House of Congress by a Member of Congress pursuant to a request by the President made in writing to that Member, or

(B) is introduced in a House of Congress and satisfies the cosponsorship criteria set forth in subsection (c); and—

(2) if such resolution—

(A) constitutes a declaration of war or specific statutory authorization within the meaning of this Act, or

(B) requires the President to terminate, limit, or refrain from a use of force abroad.

(b) ELIGIBLE CONCURRENT RESOLUTIONS.—A concurrent resolution shall be entitled to the expedited procedures set forth in section 201 if such resolution satisfies the cosponsorship criteria set forth in subsection (c) and contains a finding that—

(1) a use of force abroad began on a specific date or that a Use of Force Report was required to be submitted;

(2) a use of force abroad has exceeded the period of limitation set forth in section 104;

(3) the President has acted outside the authority of section 101(a) or abused the authority of section 104(3); or

(4) a use of force is otherwise being conducted in a manner inconsistent with the provisions of this Act.

(c) COSPONSORSHIP CRITERIA.—A joint resolution described in subsection (a)(1)(B) or a concurrent resolution described in subsection (b) is a resolution for purposes of section 201 if such resolution has been cosponsored—

(1) by a majority of the members of the Congressional Leadership Group who are members of the House of Congress in which it is introduced; or

(2) by 30 percent of the membership of the House of Congress in which it is introduced.

SEC. 106. FUNDING LIMITATIONS.

(a) PROHIBITION.—No funds made available under any provision of law may be obligated or expended for any use of force abroad inconsistent with the provisions of this Act.

(b) POINT OF ORDER.—(1) Whenever the Congress adopts a concurrent resolution making a finding under paragraph (2), (3), or (4) of section 105(b), it shall thereafter not be in order in either House of Congress to consider any bill or joint resolution or any amendment thereto, or any report of a committee of conference, which authorizes or provides budget authority to carry out such use of force.

(2) Any committee of either House of Congress that reports any bill or joint resolution, and any committee of conference which submits any conference report to either such House, authorizing or providing budget authority which has the effect of providing resources to carry out any such use of force, shall include in the accompanying committee report or joint statement, as the case may be, a statement that budget authority for that purpose is authorized or provided in such bill, resolution, or conference report.

SEC. 107. JUDICIAL REVIEW.

(a) STANDING.—(1) Any Member of Congress may bring an action in the United States District Court for the District of Columbia for declaratory judgment on the grounds that the provisions of this Act have been violated.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(b) THREE-JUDGE COURT.—Any action brought under subsection (a) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

(c) JUSTICIABILITY.—(1) In any action brought under subsection (a), the United States District Court and the United States Supreme Court, if applicable, shall not refuse to make a determination on the merits based upon the doctrine of political question, remedial discretion, equitable discretion, ripeness, or any other finding of nonjusticiability, unless such refusal is required by Article III of the Constitution.

(2) Notwithstanding the number, position, or political party affiliation of any party to an action brought under subsection (a), it is the intent of Congress that the United States District Court and, if applicable, the United States Supreme Court infer that Congress would disapprove of any use of force inconsistent with the provisions of this Act and find that an impasse exists between Congress and the Executive which requires judicial resolution.

(d) JUDICIAL REMEDIES.—If the United States District Court, in an action brought under subsection (a), finds that a Use of Force Report was required to have been submitted under this Act but was not submitted, it shall issue an order declaring that the period set forth in section 104 has begun on the date of the United States District Court's order or on a previous date, as may be determined by the United States District Court.

(e) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order entered by the United States District Court in an action brought under subsection (a), including any finding that a Use of Force Report was or was not required to have been submitted to the Congress, shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered, and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section shall be issued by a single Justice of the Supreme Court.

(f) EXPEDITED JUDICIAL CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite, to the greatest possible extent consistent with Article III of the Constitution, the disposition of any matter brought under this section.

SEC. 108. INTERPRETATION.

(a) CONSTRUCTION.—Nothing in this Act may be construed as requiring any use of force abroad.

(b) SPECIFIC AUTHORIZATION REQUIRED.—Authority to use force may not be inferred—

(1) from any provision of law, unless such provision states that it is intended to constitute specific statutory authorization within the meaning of this Act; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by a statute stating that it is intended to constitute specific statutory authorization within the meaning of this Act.

(c) STATUS OF CERTAIN CONGRESSIONAL ACTIONS.—The disapproval by Congress of, or the failure of Congress to approve, a measure—

(1) terminating, limiting, or prohibiting a use of force; or

(2) containing a finding described in section 105(b);

may not be construed as indicating congressional authorization or approval of, or acquiescence in, a use of force abroad, or as a congressional finding that a use of force abroad is being conducted in a manner consistent with this Act.

SEC. 109. SEVERABILITY.

(a) SEVERABILITY.—Except as provided in subsection (b), if any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

(b) EXCEPTION.—If section 101(b), 103, 104, or 106 of this Act or the application thereof to any person or circumstance is held invalid, section 101(a) of this Act shall be deemed invalid and the application thereof to any other person or circumstance shall be null and void.

SEC. 110. REPEAL OF THE WAR POWERS RESOLUTION.

The War Powers Resolution (50 U.S.C. 1541 et seq.; Public Law 93–148), relating to the exercise of war powers by the President under the Constitution, is hereby repealed.

TITLE II—EXPEDITED PROCEDURES

SEC. 201. CONGRESSIONAL PRIORITY PROCEDURES.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''resolution'' means any resolution described in subsection (a) or (b) of section 105; and

(2) the term ''session days'' means days on which the respective House of Congress is in session.

(b) REFERRAL OF RESOLUTIONS.—A resolution introduced in the House of Representatives shall be referred to the Committee on International Relations of the House of Representatives. A resolution introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate.

(c) DISCHARGE OF COMMITTEE.—(1) If the committee to which is referred a resolution has not reported such a resolution (or an identical resolution) at the end of 7 calendar days after its introduction, such committee shall be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House of Congress involved.

(2) After a committee reports or is discharged from a resolution, no other resolution with respect to the same use of force may be reported by or be discharged from such committee while the first resolution is before the respective House of Congress (including remaining on the calendar), a committee of conference, or the President. This paragraph may not be construed to prohibit concurrent consideration of a joint resolution described in section 105(a) and a concurrent resolution described in section 105(b).

(d) CONSIDERATION OF RESOLUTIONS.—(1)(A) Whenever the committee to which a resolution is referred has reported, or has been discharged under subsection (c) from further consideration of such resolution, notwithstanding any rule or precedent of the Senate,

including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House of Congress to move to proceed to the consideration of the resolution and, except as provided in subparagraph (B) of this paragraph or paragraph (2) of this subsection (insofar as it related to germaneness and relevancy of amendments), all points of order against the resolution and consideration of the resolution are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall be in order, except that such motion may not be entered for future disposition. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House of Congress, to the exclusion of all other business, until disposed of, except as otherwise provided in subsection (e)(1).

(B) Whenever a point of order is raised in the Senate against the privileged status of a resolution that has been laid before the Senate and been initially identified as privileged for consideration under this section upon its introduction pursuant to section 105, such point of order shall be submitted directly to the Senate. The point of order, ''The resolution is not privileged under the Use of Force Act'', shall be decided by the yeas and the nays after four hours of debate, equally divided between, and controlled by, the Member raising the point of order and the manager of the resolution, except that in the event the manager is in favor of such point of order, the time in opposition thereto shall be controlled by the Minority Leader or his designee. Such point of order shall not be considered to establish precedent for determination of future cases.

(2)(A)(i) Consideration in a House of Congress of the resolution, and all amendments and debatable motions in connection therewith, shall be limited to not more than 12 hours, which, except as otherwise provided in this section, shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader, or by their designees.

(ii) The Majority Leader or the Minority Leader or their designees may, from the time under their control on the resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(B) Only amendments which are germane and relevant to the resolution are in order. Debate on any amendment to the resolution shall be limited to 2 hours, except that debate on any amendment to an amendment shall be limited to 1 hour. The time of debate for each amendment shall be equally divided between, and controlled by, the mover of the amendment and the manager of the resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(C) One amendment by the Minority Leader is in order to be offered under a one-hour time limitation immediately following the expiration of the 12-hour time limitation if the Minority Leader has had no opportunity to offer an amendment to the resolution thereto. One amendment may be offered to the amendment by the Minority Leader under the preceding sentence, and debate shall be limited on such amendment to one-half hour which shall be equally divided between, and controlled by, the mover of the amendment and the manager of the resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(D) A motion to postpone or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is in order, except that such motion may not be entered for future disposition, and debate on such motion shall be limited to 1 hour.

(3) Whenever all the time for debate on a resolution has been used or yielded back, no further amendments may be proposed, except as provided in paragraph (2)(C), and the vote on the adoption of the resolution shall occur without any intervening motion or amendment, except that a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House of Congress may occur immediately before such vote.

(4) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be limited to one-half hour of debate, equally divided between, and controlled by, the Member making the appeal and the manager of the resolution, except that in the event the manager is in favor of any such appeal, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(e) TREATMENT OF OTHER HOUSE'S RESOLUTION.—(1) Except as provided in paragraph (2), if, before the passage by one House of a resolution of that House, that House receives from the other House a resolution, then the following procedures shall apply:

(A) The resolution of the sending House shall not be referred to a committee in the receiving House.

(B) With respect to a resolution of the House receiving the resolution, the procedure in that House shall be the same as if no resolution had been received from the sending House, except that the resolution of the sending House shall be considered to have been read for the third time.

(C) If the resolutions of the sending and receiving Houses are identical, the vote on final passage shall be on the resolution of the sending House.

(D) If such resolutions are not identical—

(i) the vote on final passage shall be on the resolution of the sending House, with the text of the resolution of the receiving House inserted in lieu of the text of the resolution of the sending House;

(ii) such vote on final passage shall occur without debate or any intervening action; and

(iii) the resolution shall be returned to the sending House for proceedings under subsection (g).

(E) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution originated in the receiving House.

(2) If one House receives from the other House a resolution before any such resolution is introduced in the first House, then the resolution received shall be referred, in the case of the House of Representatives, to the Committee on International Relations and, in the case of the Senate, to the Committee on Foreign Relations, and the procedures in that House with respect to that resolution shall be the same under this section as if the resolution received had been introduced in that House.

(f) TREATMENT OF IDENTICAL RESOLUTIONS.—If one House receives from the other House a resolution after the first House has disposed of an identical resolution, it shall be in order to proceed by nondebatable motion to consideration of the resolution received by the first House, and that received resolution shall be disposed of without debate and without amendment.

(g) PROCEDURES APPLICABLE TO AMENDMENTS BETWEEN THE HOUSES OF CONGRESS.—The following procedures shall apply to dispose of amendments between the Houses of Congress:

(1) Upon receipt by a House of Congress of a message from the other House with respect to a resolution, it is in order for any Member of the House receiving the message to move to proceed to the consideration of the respective resolution. Such motion shall be disposed of in the same manner as a motion under subsection (d)(1)(A). Such a motion is not in order after conferees have been appointed.

(2)(A) The time for debate in a House of Congress on any motion required for the disposition of an amendment by the other House to the resolution shall not exceed 2 hours, equally divided between, and controlled by, the mover of the motion and manager of the resolution at each stage of the proceedings between the two Houses, except that in the event the manager is in favor of any such motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(B) The time for debate for each amendment to a motion shall be limited to one-half hour.

(C) Only motions proposing amendments which are germane and relevant are in order.

(h) PROCEDURES APPLICABLE TO CONFERENCE REPORTS AND PRESIDENTIAL ACTION.—(1) Either House of Congress may disagree to an amendment or amendments made by the other House to a resolution or may insist upon its amendment or amendments to a resolution, and request a conference with the other House at anytime. In the case of any disagreement between the two Houses of Congress with respect to an amendment or amendments to a resolution which is not resolved within 2 session days after a House of Congress first amends the resolution originated by the other House, each House shall be deemed to have requested and accepted a conference with the other House. Upon the request or acceptance of a conference, in the case of the Senate, the President pro tempore shall appoint conferees and, in the case of the House of Representatives, the Speaker of the House shall appoint conferees.

(2) In the event the conferees are unable to agree within 72 hours after the second House is notified that the first House has agreed to conference, or after each House is deemed to have agreed to conference, they shall report back to their respective House in disagreement.

(3) Notwithstanding any rule in either House of Congress concerning the printing of conference reports in the Congressional Record or concerning any delay in the consideration of such reports, such report, including a report filed or returned in disagreement, shall be acted on in the House of Representatives or the Senate not later than 2 session days after the first House files the report or, in the case of the Senate acting first, the report is first made available on the desks of the Senators.

(4) Debate in a House of Congress on a conference report or a report filed or returned in disagreement in any such resolution shall be limited to 3 hours, equally divided between the Majority Leader and the Minority Leader, and their designees.

(5) In the case of a conference report returned to a House of Congress in disagreement, an amendment to the amendment in disagreement is only in order if it is germane and relevant. The time for debate for such an amendment shall be limited to one-half

hour, to be equally divided between, and controlled by, the mover of the amendment and the manager of the resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(6) If a resolution is vetoed by the President, the time for debate in consideration of the veto message on such measure shall be limited to 20 hours in each House of Congress, equally divided between, and controlled by, the Majority Leader and the Minority Leader, and their designees.

(i) RULES OF THE SENATE AND THE HOUSE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 202. REPEAL OF OBSOLETE EXPEDITED PROCEDURES.

Section 1013 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (50 U.S.C. 1546a), relating to expedited procedures for certain joint resolutions and bills, is repealed.

USE OF FORCE ACT—SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. The title of the bill is the ''Use of Force Act (UFA).''

Section 2. Table of Contents.

Section 3. Findings. This section sets forth three findings regarding the need to provide a statutory framework to facilitate joint decisionmaking between Congress and the President regarding decisions to use force abroad.

Section 4. Statement of Purpose. The key phrase in this section is ''confer and confirm Presidential authority.'' The Use of Force Act is designed to bridge the long-standing—and, for all practical purposes, unresolvable—dispute over precisely what constitutes the President's ''inherent'' authority to use force. Whereas the War Powers Resolution purported to delineate the President's constitutional authority and to grant no more, the Use of Force Act sets forth a range of authorities that are practical for the modern age and sufficiently broad to subsume all presidential authorities deemed ''inherent'' by any reasonable constitutional interpretation.

Section 5. Definitions. This section defines a number of terms, including the term ''use of force abroad,'' thus correcting a major flaw of the War Powers Resolution, which left undefined the term ''hostilities.''

As defined in the Use of Force Act, a ''use of force abroad'' comprises two prongs:

(1) a deployment of U.S. armed forces (either a new introduction of forces, a significant expansion of the U.S. military presence in a country, or a commitment to a new mission or objective); and

(2) the deployment is aimed at deterring an identified threat, or the forces deployed are incurring or inflicting casualties (or are operating with a substantial possibility of incurring or inflicting casualties.

TITLE I—GENERAL PROVISIONS

Section 101. Authority and Governing Principles. This section sets forth the Presidential authorities being ''conferred and confirmed.'' Based on the Constitution and this Act, the President may use force—

(1) to repel an attack on U.S. territory or U.S. forces;

(2) to deal with urgent situations threatening supreme U.S. interests;

(3) to extricate imperiled U.S. citizens;

(4) to forestall or retaliate against specific acts of terrorism;

(5) to defend against substantial threats to international sea lanes or airspace.

Against a complaint that this list is excessively permissive, it should be emphasized that these are the President's initial authorities to undertake a use of force—so-called ''going in'' authorities—and that the ''staying in'' conditions set forth in section 104 will, in most cases, bear heavily on the President's original decision.

This section also sets forth two governing principles; necessity and proportionality. Although unavoidably imprecise in definition, these principles set important criteria against which any use of force can be evaluated.

Section 102. Consultation. Section 102 affirms the importance of consultation between the President and Congress and establishes a new means to facilitate it. To overcome the common complaint that Presidents must contend with ''535 secretaries of state,'' the UFA establishes a Congressional Leadership Group with whom the President is mandated to consult on the use of force.

A framework of regular consultations between specified Executive branch officials and relevant congressional committees is also mandated in order to establish a ''norm'' of consultative interaction and in hope of overcoming what many find to be the overly theatrical public-hearing process that has superseded the more frank and informal consultations of earlier years.

Note: An alternative to the Use of Force Act is to repeal (or effectively repeal) the War Powers Resolution and leave in its place only a Congressional Leadership Group. (This is the essence of S.J. Res. 323, 100th Congress, legislation to amend the War Powers Resolution introduced by Senators Byrd, Warner, Nunn, and Mitchell in 1988.) This approach, which relies on ''consultation and the Constitution,'' avoids the complexities of enacting legislation such as the UFA but fails to solve chronic problems of procedure or authority, leaving matters of process and power to be debated anew as each crisis arises. In contrast, the Use of Force Act would perform one of the valuable functions of law, which is to guide individual and institutional behavior.

Section 103. Reporting Requirements. Section 103 requires that the President report in writing to the Congress concerning any use of force, not later than 48 hours after commencing a use of force abroad.

Section 104. Conditions for Extended Use of Force. Section 104 sets forth the ''staying in'' conditions: that is, the conditions that must be met if the President is to sustain a use of force he has begun under the authorities set forth in section 101. A use of force may extend beyond 60 days only if—

(1) Congress has declared war or enacted specific statutory authorization;

(2) the President has requested authority for an extended use of force but Congress has failed to act on that request (notwithstanding the expedited procedures established by Title II of this Act);

(3) the President has certified the existence of an emergency threatening the supreme national interests of the United States.

The second and third conditions are designed to provide sound means other than a declaration of war or the enactment of specific statutory authority by which the President may engage in an extended use of force. Through these conditions, the Use of Force Act avoids two principal criticisms of the War Powers Resolution: (1) that Congress could irresponsibly require a force withdrawal simply through inaction; and (2) that the law might, under certain cricumstances, unconstitutionally deny the President the use of his ''inherent'' authority.

To defuse the specter of a President hamstrung by a Congress too timid or inept to face its responsibilities, the UFA uses two means: first, it establishes elaborate expedited procedures designed to ensure that a vote will occur, second, it explicitly defeats the ''timid Congress'' specter by granting to the President the authority he has sought if these procedures nonetheless fail to produce a vote. Thus, if the President requests authority for a sustained use of force—one outside the realm of emergency—and Congress fails to vote, the President's authority is extended indefinitely.

The final condition should satisfy all but proponents of an extreme ''monarchist'' interpretation under which the President has the constitutional authority to use force as he sees fit. Under all other interpretations, the concept of an ''inherent'' authority depends upon the element of emergency: the need for the President to act under urgent circumstances to defend the nation's security and its citizens. If so, the UFA protects any ''inherent'' presidential authority by affirming his ability to act for up to 60 days under the broad-ranging authorities in section 101 and, in the event he is prepared to certify an extended national emergency, to exercise the authority available to him through the final condition of section 104.

Section 105. Measures Eligible for Congressional Priority Procedures. This section establishes criteria by which joint and concurrent resolutions become eligible for the expedited procedures created by Title II of the UFA.

A joint resolution that declares war or provides specific statutory authorization—or one that terminates, limits, or prohibits a use of force—becomes eligible if it is introduced: (1) pursuant to a written request by the President to any one member of Congress; (2) if cosponsored by a majority of the members of the Congressional leadership Group in the house where introduced; or (3) if cosponsored by 30 percent of the members of either house. Thus, there is almost no conceivable instance in which a President can be denied a prompt vote: he need only ask one member of Congress to introduce a resolution on his behalf.

A concurrent resolution becomes eligible if it meets either of the cosponsorship criteria cited above and contains a finding that a use of force abroad began on a certain date, or has exceeded the 60 day limitation, or has been undertaken outside the authority provided by section 101, or is being conducted in a manner inconsistent with the governing principles set forth in section 101.

While having no direct legal effect, the passage of a concurrent resolution under the UFA could have considerable significance: politically, it would represent a clear, prompt, and formal congressional repudiation of a presidential action; within Congress, it would trigger parliamentary rules blocking further consideration of measures providing funds for the use of force in question (as provided by section 106 of the UFA); and juridically, it would become a consideration in any action brought by a member of Congress for declaratory judgment and injunctive relief (as envisaged by section 107 of the UFA).

Section 106. Funding Limitations. This section prohibits the expenditure of funds for any use of force inconsistent with the UFA.

Further, this section exercises the power of Congress to make its own rules by providing that a point of order will lie against any measure containing funds to perpetuate a use of force that Congress, by concurrent resolution, has found to be illegitimate.

Section 107. Judicial Review. This section permits judicial review of any action brought by a Member of Congress on the grounds that the UFA has been violated. It does so by—

(1) granting standing to any Member of Congress who brings suit in the U.S. District Court for the District of Columbia;

(2) providing that neither the District Court nor the Supreme Court may refuse to make a determination on the merits based on certain judicial doctrines, such as political question or ripeness (doctrines invoked previously by courts to avoid deciding cases regarding the war power);

(3) prescribing the judicial remedies available to the District Court; and

(4) creating a right of direct appeal to the Supreme Court and encouraging expeditious consideration of such appeal.

It bears emphasis that the remedy prescribed is modest, and does not risk unwarranted interference of the judicial branch in a decision better reposed in the political branches. The bill provides only that the court may declare that the 60-day period set forth in Section 104 has begun.

Section 108. Interpretation. This section clarifies several points of interpretation, including these: that authority to use force is not derived from other statutes or from treaties (which create international obligations but not authority in a domestic, constitutional context); and that the failure of Congress to pass any joint or concurrent resolution concerning a particular use of force may not be construed as indicating congressional authorization or approval.

Section 109. Severability. This section stipulates that certain sections of the UFA would be null and void, and others not affected, if specified provisions of the UFA were held by the Courts to be invalid.

Section 110. Repeal of WPR. Section 110 repeals the War Powers Resolution of 1973.

TITLE II—EXPEDITED PROCEDURES

Section 201. Priority Procedures. Section 201 provides for the expedited parliamentary procedures that are integral to the functioning of the Act. (These procedures are drawn from the war powers legislation cited earlier, introduced by Senator Robert Byrd et al. in 1988.)

Section 202. Repeal of Obsolete Expedited Procedures. Section 202 repeals other expedited procedures provided for in existing law.

Mr. BIDEN. Mr. President, I thank the Chair for being so gracious as to not only sit there, but to pay attention to what I had to say. I am flattered he would listen. I hope that he and others will engage their significant legislative skills in trying to work out a feasible war powers mechanism—whether it is exactly what I have proposed or something else—so we avoid the kind of gridlock that has occurred already in the last several years.

I thank the Chair. I thank my good friend from California who has been waiting to be recognized.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, thank you very much.

I want to say to my friend from Delaware that it is very important that he continue to work on this matter of the War Powers Act because what happens to us so often is we get into a discussion about it just when we are in the middle of a conflict. That is not the time that is appropriate, and this is.

So I just wanted to thank him for his leadership.

By Mr. ROCKEFELLER (for himself, Mr. GORTON, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE):

S. 565. A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PRODUCT LIABILITY FAIRNESS ACT OF 1995

Mr. ROCKEFELLER. Mr. President, today I am pleased to introduce the Product Liability Fairness Act of 1995 with my esteemed colleague from Washington, Senator GORTON. Senator GORTON and I have joined together to introduce this much needed legislation to improve our Nation's product liability laws with a bipartisan group of our colleagues, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE. We believe the time has come to reform our current system so that injured people are more likely to be compensated and so that businesses are not crushed by the costs of nonmeritorious inappropriate lawsuits.

Senator GORTON and I have worked diligently over recent months to hone this product liability reform legislation in order to insure that it strikes the right balance between the interests of both consumers and business, and recognizing that under our current system, legal professionals are most often the biggest and often sole winners in product liability cases. Adjustments were made to reflect substantive and other concerns which we concluded were obstacles to the enactment of this necessary legislation. We believe we have significantly improved the legislation from earlier drafts and been responsive to the issues which prevented earlier enactment of this legislation.

Before I review the reasons why I believe reform of this system is imperative and what has motivated me to work so hard to refine this bill, year after year, I want to take a moment to express my deep admiration for the work of the Senator from Washington and that of his staff. I have great respect for Senator GORTON's intellect and insight, and want to acknowledge his contribution to the improvement in this legislation—and the role he will play in pushing it to final enactment. It is a privilege to work with the distinguished new chairman of the Commerce Committee in crafting this year's bill.

Our bill will encourage alternative dispute resolution as a way of getting parties to have their cases heard without going through the time and expense of a court trial. It will apply different responsibilities to a product seller as opposed to a manufacturer to avoid the kind of lawsuits that cast a wide net in the hopes of catching a cash cow. Our bill will give consumers more time to pursue legal action and it will allow consumers greater awards for punitive damages.

This effort is nothing new for me. For years I have called for legal reforms to make the system more efficient, less costly, and fairer to consumers and business alike. I am tired of West Virginia businesspeople and workers and consumers paying the price for this inequitable, ineffective legal tangle. Paying higher costs for things or being denied new products because manufacturers are scared to assume the exposure that comes with it. And then, when a problem does arise, being forced to spend ridiculous amounts of money and invest years in the hopes of maybe getting some satisfaction.

The product liability system is broken, and it is hurting the people of West Virginia, and Washington, and every State in between. The Rockefeller-Gorton bill aims to reform the laws so product liability is not an anchor around the American economy. Our approach is bipartisan and balanced and, I think, far-removed from the extreme bill in the House that is long on special interest needs and short on public interest fairness.

If today's product liability laws achieve one thing, it is that it is an equal opportunity victimizer. Injured consumers oftentimes find it impossible to get a just and prompt resolution, and just as frequently, blameless manufacturers are forced to spend thousands of dollars on baseless lawsuits. The system frequently allows negligent companies to avoid penalties and even rewards undeserving plaintiffs.

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

Under the patchwork system we now have, depending on which of the 51 different jurisdictions you are in, product liability is not more reliable than a roll of the dice. Today a consumer, seeking fair compensation for harm done by a manufacturer must brace for a legal ordeal, often tilted in favor of business. Consumers generally recover just one-third of their actual damages. And that is when they can recover damages at all after fighting their way through statutes of limitation and corporate shell games that make assigning true liability ofttimes impossible. If a consumer can plow through this maze, they must be able to endure years of litigation that wrack up legal fees faster than a taxi meter in rush-hour traffic.

And businesses are little better off. Perhaps the biggest manufacturers can ride out costly litigation with less financial drain than consumers, but businessowners face a dizzying number of lawsuits too often without merit. The result? Manufacturers abandon research and development on new products that could invite future lawsuits, and prices on products are inflated to compensate for liability insurance or huge legal retainers. Price inflation passed on to consumers who are now doubly squeezed by the liability labyrinth.

The Product Liability Fairness Act aims to correct this. Today, Senator GORTON and I introduce our bipartisan bill, with an impressive group of Senate cosponsors, and expect to begin hearings in his Commerce Subcommittee on Consumer Affairs in about a month.

Just the other day, the Washington Post quoted a business executive who said, basically, that American businesses can be lumped into two groups: those that have been sued and those that will be sued. That is no way for American industry to operate and it results in pitting consumers against business to the detriment of both. The Rockefeller-Gorton bill is a step at easing this tension and restoring some common sense to the American legal system.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 565

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act of 1995''.

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CLAIMANT.—The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means an amount equal to the sum of—

(A) the amount paid to an employee as workers' compensation benefits; and

(B) the present value of all workers' compensation benefits to which the employee is or would be entitled at the time of the determination of the claimant's benefits, as determined by the appropriate workers' compensation authority for harm caused to an employee by a product.

(3) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term ''clear and convincing evidence'' is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation.

(5) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(8) INSURER.—The term ''insurer'' means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(9) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(10) NONECONOMIC LOSS.—The term ''noneconomic loss''—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(11) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(13) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(14) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, 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; and

(II) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(15) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(16) TIME OF DELIVERY.—The term ''time of delivery'' means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 3. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this Act 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 Act 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 Act 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 Act.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this Act, including any standard of liability applicable to a manufacturer, shall not be subject to this Act, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law, except the Act of April 22, 1908 (35 Stat. 65 et seq., chapter 149; 45 U.S.C. 51 et seq.) (commonly known as the ''Federal Employers' Liability Act'') and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.);

(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 any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a State or 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 relating to contamination or pollution 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 contamination or pollution.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this Act 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 Act (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. 4. 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 Act 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, 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 such factors as the court considers appropriate.

SEC. 5. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this Act 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 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;

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

SEC. 6. 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 Act 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. 7. 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 Act, 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 Act, 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. 8. 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 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) LIMITATION ON AMOUNT.—The amount of punitive damages that may be awarded for a claim in any product liability action that is subject to this Act shall not exceed 3 times the amount awarded to the claimant for the economic injury on which the claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF EITHER PARTY.—

(1) IN GENERAL.—At the request of either party, the trier of fact in a product liability action that is subject to this Act shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in the separate proceeding under paragraph (1)—

(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and

(ii) shall not include evidence of the overall assets of the defendant.

SEC. 9. 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 Act 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 Act 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 Act 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 Act 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) EXCEPTION.—A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(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 Act not later than 1 year after the date of enactment of this Act.

SEC. 10. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this Act, 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 amount of noneconomic loss caused to the claimant, whether or not such person is a party to the action.

SEC. 11. 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 Act.

(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 Act, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN CONSENT.—Except as provided in subparagraph (C)—

(i) an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the insurer; and

(ii) no release to or agreement with the manufacturer or product seller described in clauses (i) through (iv) of subparagraph (A) shall be valid or enforceable for any purpose without the consent of the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this Act, 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. 12. 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 Act.

SUMMARY OF THE PRODUCT LIABILITY FAIRNESS ACT

Alternative Dispute Resolution (ADR): Either party may offer to participate in a voluntary, non-binding state-approved ADR procedure. If a defendant unreasonably refuses to participate and a judgment is entered for the claimant, the defendant must pay the claimant's reasonable legal fees and costs. There is no penalty for claimants who refuse to participate in an ADR procedure. No penalty may be assessed against a defendant unless judgment is entered for the claimant.

Product Sellers: Product sellers will be liable only for their own negligence or failure to comply with an express warranty. However, if the manufacturer cannot be brought into court or is unable to pay a judgment, the seller shall be liable as if it were a manufacturer. This assures that injured persons will always have available an avenue for recovery.

Alcohol and Drugs: The defendant has an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and the condition was more than 50 percent responsible for plaintiff's injuries.

Misuse and Alteration: The bill limits a defendant liability if the product user has misused or altered the product in an unforeseeable manner.

Punitive Damages: Punitive damages may be awarded if a plaintiff proves, by clear and convincing evidence, that the harm was caused by defendant's ''conscious, flagrant indifference to the safety of others.'' To streamline litigation, trials may be bifurcated so the punitive damages phase is separate from the proceedings on compensatory damages. Courts may award punitive damages up to three times economic damages, or $250,000, whichever is greater.

Statute of Limitations: The pro-plaintiff statute of limitations is two years, which begins to run when the claimant reasonably should have discovered both the harm and cause.

Statute of Repose: The statute of repose is for capital and durable goods used in the workplace, and is set at 20 years.

Joint and Several Liability: The bill abolishes joint liability with respect to non-economic damages, such as pain and suffering. States are permitted to provide joint liability for economic damages, such as medical expenses and lost wages, so that these damages are always fully compensated in all cases.

Workers' Compensation Offset: An employer's right to recover worker's compensation benefits from a manufacturer whose product allegedly harmed a worker is preserved unless the manufacturer can prove, by clear and convincing evidence, that the employer caused the injury.

Mr. GORTON. Mr. President, I am pleased to join with Senator ROCKEFELLER to introduce legislation that will bring common sense back to America's product liability system. The Product Liability Fairness Act of 1995 is a bipartisan proposal that takes a moderate, sensible approach to product liability reform.

As an attorney myself, I recognize that America's trial lawyers would like to see me disbarred for introducing this bill.

It should come as no surprise that they are planning to spend $20 million to defeat this legislation. They're making millions off the current system, and the legislation we're introducing today will put an end to the lawyers' financial free-for-all.

Consider just a couple of cases from my own State of Washington. Connelly Water Skis of Lynnwood pays $345,000 a year for liability insurance even though they have never lost a liability case. They paid more than $83,000 in legal expenses to defend themselves in a case in which the plaintiff has asked be dismissed. They paid more than $12,000 to defend themselves in a case in which no Connelly product was involved.

Commercial Plastics of Seattle, which manufacturers candy dispensers, has been sued in a case involving a drunken woman who pulled a unit off a grocery store shelf on New Year's Eve. She wasn't hurt, but she is suing for mental anguish caused by the embarrassment of the incident.

Bayliner Boats of Everett manufactures a 25-foot hard-top boat with the steering station inside. The plaintiff sawed a hole through the hard top—kind of like a sunroof. He was sitting on the top driving the boat with his feet. He saw an oncoming boat and tried to honk the horn with his toe. He turned the boat to the left with his feet, and shifted his weight to the right to counter the turn. He fell overboard, was injured, and is now suing Bayliner.

Keep in mind that these examples come from a State where limits on punitive damages are already in place.

Does it make sense for consumers to pay higher prices for water skis or other equipment because the person used the product incorrectly? Does it make sense for consumers to pay higher costs for products because someone did something that defies all common sense? Does it make sense for consumers to pay higher prices for products because some inebriated person injures, and even embarrasses him or herself?

And most importantly, does it make sense that trial attorneys are ripping off consumers around the country when they make millions of dollars off these cases?

Out of every dollar spent on product litigation, more than 50 percent of the money goes to the lawyers. They're the only ones winning anything. Their opposition to this legislation is only about protecting their fees—not protecting consumers.

Consider the Chicago law firm that issued a bulletin to its clients stating: ''We are pleased to announce that we obtained for our client the largest verdict ever for an arm amputation: $7.8 million.''

Consider the new Florida company, called ''Went For It,'' that researches the names of accident victims and sells them to lawyers.

Consider the New York lawyer found guilty of using a pickax to enlarge a pothole before he photographed it for a client with a personal injury claim.

It's outrageous.

This country desperately needs a fair and efficient product liability system. A fair and efficient product liability system should have consistent standards and yield predictable results. It should award damages in proportion to the harm suffered and those damages should be paid only by those responsible. A fair and efficient system should award damages in a timely manner without incurring large, wasteful transaction costs.

The status quo defended mightily by the trial lawyers is far from fair or efficient. Consumers, those injured by faulty products, and American businesses all suffer as a result of selfish lawyers.

Fair compensation is not awarded in a timely fashion. Cases drag on for years. Over 20 percent of seriously injured persons receive no compensation for 5 years. A 1989 GAO study says that the average case takes nearly 3 years to resolve, and longer if there is an appeal. When compensation is awarded, transaction costs—such as attorney's fees—absorb too much money that should have gone to injured persons.

Not only does the present product liability system generate excessive costs and delay, it does not compensate injured persons in proportion to their losses. If a person's injuries are minor, they can expect to receive a windfall of nearly nine times their losses. If their injuries are severe, they should expect to receive only 15 percent of their losses. A severely injured person cannot afford to gamble on the outcome of lengthy litigation. As a result, many are forced to settle for an amount far less than their injuries merit.

Injured persons are not the only ones that are treated unfairly by the tort system. That system imposes inordinate costs on the U.S. economy. Domestic manufacturers face product liability costs up to 20 to 50 times higher than those paid by foreign competitors.

These excessive costs put American business at a competitive disadvantage in world markets. Important sectors of our domestic economy are losing substantial market shares to foreign competitors. For example, the Association of Manufacturing Technology estimates its member companies have lost, in recent years, nearly 25 percent of their market share to foreign competitors. Much of this loss is attributed to the excessive costs of the current product liability system, which wastes vital resources and inhibits the development and marketing of innovative products. The U.S. machine tool industry spends seven times more on product liability costs than on research and development.

When the job creators have to pay insurance premiums instead of salaries, we've got a lot of people on unemployment for no good reason. Listen to the small business owner in Hoquiam who pays more in product liability premiums than he does in Federal taxes. Listen to the small business owner in Spokane who says his insurance premiums often equal his before-tax profits.

This is outrageous.

Innovation is also squelched because manufacturers decide not to market new products due to these excessive transaction costs and the possibility of unjustified, unpredictable but nonetheless crushing liability. These concerns further stifle innovation because scientific research essential for advanced product development, is foregone.

For instance, promising AIDS vaccines have been shelved. New hazardous waste cleanup technologies have been shelved. Asbestos substitutes have been

shelved. The list of valuable products and life-saving medicines that have been shelved and kept from the market goes on, and on, and on, and on.

The current system is clearly broken, and it must be fixed. I hope that my colleagues will join with Senator ROCKEFELLER and me in supporting a bill that seeks in a balanced way to introduce fairness and efficiency to our product liability system.

Mr. MCCONNELL. Mr. President, I am pleased to join my colleagues in the introduction of the Product Liability Reform Act of 1995. Our litigation system needs repair; less than half—43 cents to be precise—of every dollar spent in the liability system goes to injured victims. More than half of every dollar represents transactions costs—lawyers' fees, the cost of keeping the courts running, and other associated expenses of the legal system. Something is seriously wrong with a system that pays out more to those who run the legal system than to those who need it for dispute resolution.

And, litigation costs drain billions of dollars from our economy. We know there is a litigation tax associated with putting goods and services in the stream of commerce. For example, the price, on average, of an 8-foot ladder is $119.33. But the actual cost is only $94.47, with the litigation tax representing 25 percent of the cost. And, the litigation tax for a heart pacemaker is 20 percent, driving the cost up an additional $3,000. (Source: Newsweek, Oct. 25, 1993, reprinting from, ''The 96 Billion Dollar Game,'' Philip Hermann.)

This litigation tax impedes innovation and invention. Companies hesitate to put products on the market because of the high risk of litigation. That means fewer choices for consumers and a shrinking share of the global market for American companies.

And unless we fix the problems of our legal system, the situation is bound to get worse. Longer delays in the courts, increased inefficiency and unpredictability in getting compensation to victims, and more burdens on productivity and invention.

This bill is a significant step in the right direction. It offers a national answer to a nationwide problem—uniformity and certainty in America's product liability laws.

The bill will not prevent those injured by defective products from receiving fair compensation for their injuries. Rather, it will offer some protection for those parties who had no connection to the defects in the product from unfairly and unreasonably having to pay the tab in a lawsuit. But, make no mistake about it, those who are responsible for the defects will be held accountable for the injuries they cause.

In addition, this bill restores the element of punishment to punitive damages. In the current environment, the quest for punitive damages is like taking a chance on the lottery—some plaintiffs win big and many win nothing at all. Often times, the award of punitive damages bears no relationship to the injuries suffered. The bill will link punitive damages to the economic loss by providing that where punitive damages are awarded, they should be awarded in an amount of three times the economic loss or $250,000, whichever is greater.

The time for this bill is long overdue. I look forward to its prompt consideration in the Commerce Committee and speedy action on the Senate floor.

Mr. LIEBERMAN. Mr. President, I am proud to join a broad bipartisan group of eight Senators led by my distinguished colleagues, Senators ROCKEFELLER and GORTON, in introducing a bill to address one of the most important issues facing this Congress—product liability reform. This is my third effort to pass much-needed changes to the product liability system and, after years of frustration, I believe we are finally going to succeed. This year's bill builds on last year's effort and is the fairest and strongest bill possible.

No one should be praising the status quo. The current system is inefficient, unpredictable, costly, slow, and inequitable. And everyone pays: plaintiffs, defendants, manufacturers, product sellers, and consumers. This bill addresses these problems by making a number of balanced and limited changes intended to reduce transaction costs, provide greater certainty to everyone, and increasing the competitiveness of U.S. firms. I urge my colleagues to support this bill.

Mr. President, I did not join the fight for product liability reform until my second year in the Senate. I came here as a former State attorney general who had been active in consumer protection. I knew that some consumer groups opposed Federal product liability legislation, and as a former State official, I was hesitant to step into an area that had traditionally been the province of State law. In fact, as attorney general of Connecticut and a member of the National Association of Attorneys General, I voted for resolutions opposing earlier Federal product liability legislation that would have swept away virtually all State product liability laws and repealed the doctrine of strict liability for product defects.

But as I traveled around the State of Connecticut, this problem—product liability litigation—kept coming up in my discussions with small business men and women, with small and large manufacturing companies, and with plant managers. They told me of problems they had experienced with the product liability system, of the expense of defending yourself even when you win, of the cost of settlements to avoid paying litigation costs, and of the time and energy that product liability suits diverted away from the business of designing new products and bringing them to market.

One of my favorite examples concerns an experience of Mr. Robert Lyons, who runs the Bilco Co. in New Haven, CT. Bilco, a small company, manufactures roof hatch doors. Several years ago, Mr. Lyons and his colleagues at Bilco invented an ingenious safety feature called the LadderUP Safety Post. This device attached to the ladder that led to the roof hatch. When the hatch was opened, the LadderUP Safety Post would automatically extend through the opening to a height several feet above the level of the roof. This allowed a person climbing out of the top of the hatch to hold on to the pole as he or she stepped up onto the roof.

After Bilco put the LadderUP Safety Post on the market, Bilco was sued by a person who had fallen when using a Bilco hatch without the device. The plaintiff argued that Bilco should only have sold its roof hatch with a LadderUP device, and that Bilco should not have permitted its customers simply to buy a hatch. The plaintiff also argued that Bilco should have more widely advertised its product. Despite the fact that anyone who uses a ladder surely must know that you have to be careful when climbing on the top rungs, and the fact that the builder had chosen not to buy or retrofit the hatch with a LadderUP device, Bilco ended up paying $20,000 to settle this case out of court, judging that to be cheaper than going through full litigation.

Now there are some people who will say, so what is wrong with that? After all, a person who was injured received $20,000 to help compensate for his injuries. But the flaw with the reasoning should be apparent. Private businesses cannot print money. A $20,000 payment here was $20,000 less to be invested in new plant equipment, in developing new products, or hiring new people. And what did Mr. Lyons and Bilco actually do to deserve having to pay $20,000? They invented and put on the market a new product, a new safety device. They did not build the building with the roof hatch, they did not install the hatch, they were not the ones who decided to forego purchasing a LadderUP Safety Post for use with the hatch. All they did was to build a better mousetrap. And for that, a lawyer beat a path to their door.

The injustice of this case points out a fundamental problem with our product liability system. At a time when we need to be rebuilding our country's manufacturing base, to be promoting innovation in our manufacturing sector, to be designing, building and bringing to market the next generation of high-quality, high-value added products the world will need, our liability system chills innovation like a bucket of cold water.

The debate should really center around consumers, because it is consumers who suffer because of this system, not simply businesses. Consumers are the ones who have to pay higher prices in order to cover product liability-related costs. If a ladder costs 20

percent more because of liability-related costs, consumers—not businesses—end up paying that 20 percent premium.

Consumers are also the ones who suffer when valuable innovations do not occur, or when needed products like life-saving medical devices or earthquake shock absorbers do not come to market because no one will supply the necessary raw materials.

Last term, at a hearing on product liability and sales of raw materials for medical devices, Mr. Mark Reily described what life would be like for his then 9-year-old son, Thomas Reily, if he could no longer obtain a replacement for the silicone shunt in Thomas' head: ''The fluid builds pressure inside the head, like steam building inside a locked pressure cooker. If left untreated, it is a well-documented fact that the patient will initially suffer severe brain damage, become comatose and ultimately die.'' Mr. Reily pleaded for us to reform our product liability laws to ensure that raw materials for Thomas' shunt will continue to be available to the shunt's makers. Mark and Thomas Reily are consumers who are being hurt, not helped, by our product liability system.

The point that Mr. Reily and his son drove home is that the best interests of consumers as a whole are not always identical to the interests of people who are seeking compensation. The people who suffer or die because a new drug or medical device was never developed, or was delayed in its development, are hurt as surely as those who suffer because a device malfunctioned or a drug was improperly designed. These silent victims of our product liability system's chilling effect on innovation are consumers whose interests also deserve protection.

Of course, even for its putative beneficiaries, people who are injured by defective products, the legal system hardly can be said to work well. GAO, in its five-State survey, found that product liability cases took an average of 2½ years just to reach trial. If the case was appealed, it took, on average, another year to resolve. This is a very long time for an injured person to wait for compensation.

In some instances too, our product liability laws have erected barriers to suit that just do not make sense. For example, in some States, the statute of limitations—the time within which a lawsuit can be brought—begins to run even though the injured person did not know they were injured and could not have known that the product was the cause. In those States, the time in which to bring a suit can expire before the claimant knows or could ever know there is a suite to bring.

Mr. President, no one will argue that this bill will cure all the ills in our product liability system. That would require a gargantuan overhaul and I doubt we can reach agreement as to what that would look like. But we can, I believe, work to enact a balanced package of reforms that works incrementally to eliminate the worst aspects of our current system, to restore some balance to our product liability system. I believe this bill is just such a balanced package.

For people injured by defective products, this bill makes a set of very important and beneficial changes. First, it enacts uniform, nationwide statute of limitations of 2 years from the date the claimant knew or should have discovered both the fact he or she was injured and the cause of the injury. Injured people will no longer lose the right to sue before they knew both that they were hurt and that a specific product caused their injury.

Second, this bill will force defendants to enter alternative dispute resolution processes which can resolve a case in months rather than years. If the defendant unreasonably refuses to enter into ADR, it can be liable for all of claimant's costs and attorney's fees. On the other hand, if a plaintiff unreasonably refuses to enter ADR, she will suffer no penalty.

For workers who face possible injury in the workplace, this bill will reform the product liability system to give employers a stronger incentive to provide a safe workplace. Under current law, an employer is often permitted to recoup the entire amount of workers compensation benefits paid to an employee who was injured by a defective machine, even if the employer contributed significantly to the injury by, for example, running the machine at excessive speeds or removing safety equipment. This essentially means that an employer can end up paying nothing despite the fact that their misconduct was a significant cause of the injury.

This bill would change this. When an employer is found, by clear and convincing evidence, to be partly responsible for an injury, the employer loses recoupment in proportion to its contribution to the injury. This does not change the amount of money going to the injured person, but it makes the employer responsible for its conduct.

For manufacturers, this bill reforms the product liability system to establish a nationwide standard for punitive damages of proof of conscious, flagrant indifference to public safety by clear and convincing evidence. The clear and convincing evidence standard is already the law in over 25 States. Punitive damages in these product liability cases would also be limited to the greater of $250,000 or three times the amount of economic damages. The American College of Trial Lawyers and ALI support this provision. It will bring some reasonable limits to what too often just results in windfalls to particular claimants instead of the original purpose—punishing defendant's wrongful behavior.

Manufacturers of durable goods—goods with life expectancy over 3 years that are used in the workplace—will also be assured that they cannot be sued more than 20 years after they deliver a product. This will bring an end to suits such as the one in which Otis Elevator was sued over a 75-year-old elevator that had been modified and maintained by a number of different owners and repair persons through the decades. By the way, this same provision will not apply to household goods such as refrigerators, and is only intended to cover those workplace injuries that are already covered by workers compensation.

Manufacturers will also have some protection against ''deep pocket'' liability. While the bill still permits States to hold all defendants jointly liable for economic damages such as lost wages, foregone future earnings, past and future medical bills, and cost of replacement services, noneconomic damages such as pain and suffering will be apportioned among codefendants on the basis of each defendant's contribution to the harm. In addition, if the plaintiff misused or altered a product, or used the product under the influence of drugs or alcohol, the manufacturers share of the damages will also be reduced.

For wholesalers and retailers, they will, in the majority of cases, be relieved of the threat that they can be held liable for the actions of others. Under current law, for example, the owner of the corner hardware store could be sued for injuries resulting from a power saw just as if she was the manufacturer of a power saw, even if she had no input in the design or assembly of the power saw and had done nothing other than to inspect a sample to make sure there were no obvious flaws and to put the items on the shelf.

For our American economy and industrial base, passage of this product liability reform legislation will move us back to promoting innovation and the development and commercialization of new products. Passing this bill will create and save jobs here, not overseas.

After years of debate, this compromise bill balances important issues: It is pro-business and pro-consumer. It is pro-innovation and pro-safety. But most importantly, it finally balances the scales of justice properly to ensure that victims of defective products remain compensated while consumers receive the best products available. It is incremental reform. And it is a key component of any strategy for long-term economic growth, and for rebuilding our country's manufacturing base.

Let me say finally, that in the upcoming months, this bill will be debated over and over. In that rhetoric and inevitable soundbites, one thing should not be lost. This bill does not absolve a company from making an unsafe product. If a company has made a defective product, it must be held fully accountable. Period. But when a company does follow the rules and makes a safe product, it should not have to settle frivolous claims simply to avoid the expense of litigation and protect

against the risk that a huge and irrational judgment will be awarded against it.

The time has come for us to move forward, to give this balanced package a chance for full consideration by this body. We owe it to the American people to look beyond the rhetoric. We owe it to the American people to pass this bill. Mr. President, I urge my colleagues to support and enact these overdue reforms.

Mr. DODD. Mr. President, I am pleased to join with the bipartisan group of Senators who are original cosponsors of the Product Liability Fairness Act of 1995. I would also like to commend Senators ROCKEFELLER, GORTON, and LIEBERMAN for all of their hard work on this legislation.

The current product liability system simply does not serve anyone well. The American people know the problem—the results in a product liability case depend primarily on a person's ability to afford a good lawyer. That's true whether you are a consumer injured by an unsafe product, or a businessperson trying to defend yourself against an unjustified lawsuit.

For consumers, the studies show that injured people must wait too long for fair compensation. A recent study by the General Accounting Office found that cases take about 3 years to be resolved—longer if there is an appeal.

Other studies show dramatically different compensation for similar injuries incurred in the very same way. Wealthier and better educated people fare far better than low-income people and less well-educated people.

So the present system is not serving the needs of our injured citizens. At the same time, it's not serving the needs of American businesses. They are reluctant to introduce new products because they are not sure what kind of liability they will face under the laws of 55 States and territories.

This uncertainty is particularly difficult for small businesses, who cannot afford the huge legal costs of the present system. And these are not legal costs that fall only on unscrupulous manufacturers—many companies have run up enormous legal bills only to be vindicated by the courts. Of course, those victories are hollow at best.

And what happens if an American business is afraid to innovate, or forced to defer investment on research and development? Are those only problems for particular businesses, and unworthy of serious attention—of course not. If American businesses are unable to bring innovative products to the marketplace, or forced to take helpful products off the market, we all lose.

The search for an AIDS vaccine is a good example. At least one company, Biogen in Massachusetts, terminated its investment in an AIDS vaccine because of product liability fears.

And this problem is not limited to particular products or companies. The current product liability system threatens entire industries. The contraceptive industry is one example. A 1990 report issued by the National Research Council and the Institute of Medicine concluded that ''product liability litigation has contributed significantly to the climate of disincentives for the development of contraceptive products.''

The American Medical Association has documented this problem:

> In the early 1970's, there were 13 pharmaceutical companies actively pursuing research in contraception and fertility. Now, only one U.S. company conducts contraceptive and fertility research.

Is our country well-served by a system that prevents contraceptives, and other critical medical products, from coming to the market? Who benefits from that result?

And if the present system is not working—if it helps neither people who are injured by products nor the businesses who are trying to develop lifesaving products—what should we do? Should we simply give up and walk away? Should we say that there's nothing we can do—the problem's too big for us too handle? Of course not—we owe it to the American people to try to do better.

With passage of the Product Liability Fairness Act we will do better. This legislation may not solve all of the problems in the product liability system, but it will improve that system for everyone—for the injured people who need fast and fair compensation, for consumers who need quality products to choose from, for those businesses who are at the cutting edge of international competition, and for workers who depend on a strong economy to support their families. The moderate reforms in this measure will reduce the abuses in the current system without eliminating solid protections for those who are victimized by defective or dangerous products.

Let me highlight some of the key provisions. First, this measure will provide a more uniform system of product liability. Since about 70 percent of all products move between States, it makes sense to have a federal system for resolving disputes. With Federal rules in place, there will be more certainty in the system, and the excessive costs in the present system should come down.

The provisions in the bill that encourage alternative dispute resolution will also help reduce the costs in the current system. Currently, too much money goes to transaction costs, primarily lawyers fees, and not enough goes to victims. A 1993 survey of the Association of Manufacturing Technology found that every 100 claims filed against its members cost a total of $10.2 million. Out of that total, the victims received only $2.3 million with the rest of the money going to legal fees and other costs. Clearly, we need to implement a better system in which the money goes to those who need it—injured people.

Most importantly, and I cannot emphasize this enough, the moderate reforms in this bill offer a balanced approach to the needs of both consumers and businesses. Consumers will benefit, for example, from a statute of limitations provision that preserves a claim until 2 years after the consumer should have discovered the harm and the cause. In many cases, injured people are not sure what caused their injuries and, under the current system, they lose their ability to sue. With this legislation, people injured by products will have adequate time to bring a lawsuit.

Businesses will also benefit from this legislation. For example, in order to recover punitive damages, the plaintiff will have to prove, by clear and convincing evidence, that the harm was caused by the defendant's ''conscious, flagrant indifference to the safety of others.'' This provision will allow defendants to have a clear understanding of when they may be subject to this quasi-criminal penalty.

Under this measure, defendants also have an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and the condition was more than 50 percent responsible for plaintiff's injuries. This provision, it seems to me, is nothing more than common sense. Why should manufacturers pay for the misconduct of intoxicated people?

Furthermore, product sellers will only be liable for their own negligence or failure to comply with an express warranty. But as an added protection for injured people, this rule will not apply if the manufacturer cannot be brought into court or if the claimant would be unable to enforce a judgment against the manufacturer. This provision will eliminate the need for sellers to hire lawyers in a high percentage of the roughly 95 percent of the cases where they are presently not found to be at fault.

Mr. President, this is an issue that many of us have spent a great deal of time on. My involvement dates back to 1986, when I worked on a reform proposal with our distinguished former colleague, Senator Danforth. We did not get very far with that bill. But the effort to improve the product liability system has gained momentum in recent years, and I am optimistic that we can pass this legislation during this Congress.

Because of the enormous costs associated with the product liability system, both economic and social, we must address this issue with the seriousness that it deserves. Unfortunately, in the past, some have characterized the debate as a battle between the manufacturers and the insurance companies on the one side, and consumers and trial attorneys on the other. Some have viewed this legislation in antagonistic terms, with one side winning and one side losing.

Of course, the problem is much more complex than that and the solution

will be much more complex. As this bill moves forward, we will hear from many concerned citizens who can help us refine this legislation. I also look forward to working with my colleagues and the Clinton administration to strengthen this measure. But our Nation cannot afford to maintain the status quo, and this bill will take us a long way toward a fairer product liability system.

Mr. PRESSLER. Mr. President, I am pleased to be an original cosponsor of this important legislation. Our existing product liability system is a disaster. It is inefficient and unfair. The Senate Committee on Commerce, Science, and Transportation has long recognized these problems and has reported favorably a reform bill in six previous Congresses.

The Product Liability Fairness Act of 1995 is a balanced bill that will make substantial progress in addressing the many problems with our current system. This bill is good for consumers, good for businesses—especially small businesses—and good for those legitimately injured by faulty products.

I thank Senator GORTON and Senator ROCKEFELLER for their excellent work in preparing this bill. Their solid working relationship on this issue is indicative of the bipartisan support for these essential reforms.

Mr. President, I have long been a supporter of product liability reform and will make every effort to advance the reform effort.

Mr. HATCH. Mr. President, I am extremely pleased to cosponsor the Product Liability Fairness Act of 1995 with Senators ROCKEFELLER and GORTON, and many others. I commend their longstanding leadership on this issue.

This act represents a truly bipartisan effort to correct what many have long recognized to be malfunctions in our product liability system. We want American business to grow, to provide more jobs and more affordable consumer goods, and to continue to make medical and technological breakthroughs that benefit the people of Utah and all Americans. We can do that as well as make sure those who are wrongfully harmed in the marketplace are properly compensated, if we go about it in a rational way.

Under the current system, however, American manufacturers have been forced to devote far too many resources to the costs of product liability actions, and consumers have ultimately had to bear those costs. Punitive damage awards have particularly grown out of control and have crippled our manufacturers, distributors, and retailers. We have all heard about astronomical punitive damage awards for spilled coffee and other horror stories. What we often fail to focus on is where these terrific sums are coming from and the insidious economic damage that is caused by forcing the reallocation of millions of dollars away from productive, job creating uses.

The long and short of it is that the current system is harming both companies, workers, and consumers and is desperately in need of the reforms we propose today.

Let no one misunderstand what this bill does. It does not prevent injured people from being compensated for the harms caused to them by defective products. I strongly believe that those who are unfortunate enough to be harmed by defective products should have appropriate remedies and should be compensated for the harm they suffer.

However, product liability law as it stands today is severely skewed. What this law does is correct certain specific inequities in the law as it stands and make those corrections uniform nationwide. Many States, for example, have already enacted reforms at the State level that art similar to those we introduce today.

Under the law as it stands in many other States, however, manufacturers and others can be held responsible for striking amounts of damages for harm that they did not cause—just because another party cannot or will not pay its fair share. In addition, juries may award runaway amounts of punitive damages for a relatively small amount of harm, and courts can lack the power to adequately restrict those awards once made.

The threat alone of excessive punitive damages can force parties to settle under conditions in which they otherwise would not. Finally, as in numerous other areas of the law, litigation costs in product liability cases continue to soar.

All of this harms our economy. It removes companies' incentives to invest and discourages them from researching and developing newer and safer products. It limits the amount companies can spend on wages, research, and technology. All of this hurts consumers and workers. Litigation costs and the higher insurance costs that companies must pay to cover their expected liability are ultimately passed on to consumers. Of the cost of a simple ladder, for example, a shocking 20 percent goes to paying the costs of product liability litigation. Those costs impact the prices we pay for all sorts of other goods and services that we need and use everyday, and prevent the development and marketing of products we would like to use but cannot because companies are afraid to develop them.

These problems cannot be addressed comprehensively without a uniform, nationwide solution. I look forward to working with my colleagues to get this bill to the President.

Mr. President, I should also note that I expect to introduce civil justice reform which goes beyond product liability issues in the near future.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 566. A bill for the relief of Richard M. Sakakida; to the Committee on Armed Services.

PRIVATE RELIEF LEGISLATION

● Mr. AKAKA. Mr. President, in behalf of myself and Senator INOUYE, I am reintroducing today legislation I offered in the previous Congress for the private relief of Richard Motoso Sakakida of Fremont, CA. My bill would require the military to review whether the retired lieutenant colonel deserves the Congressional Medal of Honor, Distinguished Service Cross, or Silver Star for actions related to his service in the Philippines during World War II.

Despite many courageous and daring actions he undertook as an Army undercover agent before and during the Japanese occupation of the islands, Colonel Sakakida has never been officially recognized for his service there, largely because much of his work was classified, and therefore unknown, until well after the war. Despite efforts undertaken in his behalf by fellow veterans and Members of Congress to accord him the honors he deserves, the Army has refused to consider his case, citing a statute limiting the Medal of Honor or Distinguished Service Cross to those whose recommendations are received within 2 years of the act justifying the awards, or, in the case of World War II veterans, by 1951.

Mr. President, I believe a brief review of Colonel Sakakida's wartime exploits will convince my colleagues of the need to enact this legislation.

In March 1941, 9 months before the Japanese attack on Pearl Harbor, Richard Sakakida, the son of Japanese parents who immigrated to Hawaii at the beginning of the century, and another nisei from Hawaii became the first Japanese-Americans recruited to the Army's Counter Intelligence Police [CIP]. This unit would later become the Army Counter Intelligence Corps, or CIC.

Sworn in as a sergeant. Sakakida was sent to the Philippines, then an American possession; his mission was to spy on Japanese with possible connections to the Japanese military. There, Sakakida was able to masquerade as a draft evader from Hawaii and talk himself into being admitted to an all-Japanese residential hotel in Manila. Under cover of a prearranged job, and without any prior training or experience, he succeeded in establishing a clandestine intelligence collection operation out of his hotel room. As a measure of the success of his penetration of the Japanese community, Sakakida was even offered a post with the Japanese consulate in Mindanao.

The outbreak of war abruptly ended that possibility. Instead of returning to the American side, Sakakida was asked to stay with the Japanese community to continue his work. He relied on sheer resourcefulness to talk his way past unwitting American and Filipino security guards at the gate to the emergency Japanese relocation compound, where Japanese nationals were

being detained. His vulnerability was compounded by the fact that only a few men were aware of his secret work. In fact, he was eventually arrested on spy charges by the Philippine Constabulary and subjected to punishing interrogation at Bilibid Prison. Throughout the ordeal Sakakida maintained his cover story, as he was later able to do with his Japanese captors.

Fortuitously, he was eventually recognized by a Filipino agent who was aware of his undercover status; unfortunately, this also compromised his cover among Philippine authorities. A ruse involving his return to the Japanese compound and unceremonious arrest by American agents was staged in an attempt to maintain his cover in the Japanese community, but the rapid advance of the Japanese Army ended hopes for his return to the Japanese. For the first time since he arrived in the islands, he reentered the American fold.

Back in military uniform with the CIP, Sargent Sakakida was tasked with interrogating Japanese civilians and POW's in Manila, Bataan, and Corregidor. He translated Japanese diaries and Bataan, and Corregidor. He translated Japanese diaries and combat documents, prepared propaganda leaflets in Japanese, and called upon the Japanese to surrender in loudspeaker broadcasts. He also monitored Japanese airground communications and deciphered enemy codes. At Bataan, he singled out and translated a key captured Japanese document that led to the destruction of a large battalion-size force that was attempting a landing there. It was one of the few, perhaps only, major American battlefield successes in a string of setbacks that led to the downfall of Bataan.

When the final surrender of the Philippines became imminent at Corregidor in 1942, General MacArthur ordered Sakakida's evacuation to Australia. In spite of the prospect of certain imprisonment, possible torture, and perhaps execution at the hands of the Japanese, he chose to give up his seat on one of the last escape aircraft to a nisei lawyer. Sakakida was aware that the lawyer had a family and for various reasons would have faced serious reprisals had he been captured. As a result, by his own hand, Sakakida became the only Japanese-American to be captured by the Japanese forces in the Philippines.

Sakakida spent 6 months in a Manila prison, where he would be mercilessly interrogated and tortured. His situation was compounded by the fact that, under existing Japanese law, everyone of Japanese ancestry was considered a citizen of the empire; thus, Sakakida was viewed as a traitor. He was strung up by the arms in such a way that his shoulders were literally dislocated. His captors forced water into him, and struck his swollen stomach repeatedly; they also burned his body with lighted cigarettes. Incredibly, through it all, Sakakida would adhere to his story that he was a civilian forced to work for the U.S. Army.

After being tortured, Sakakida spent more time in Bilibid Prison, where he underwent more interrogation for alleged treason. When treason charges against him were dropped, he was assigned to work for the Japanese judge advocate of the 14th Army Headquarters, although Japanese counterintelligence agents continued their attempts to elicit his true identity through trick questions and other stratagems. He took advantage of his position to aid secretly a number of allied prisoners of war who were being held there for trial for attempting to escape; Sakakida smuggled food to them and imaginatively interpreted for them during their trials. One of these men, a naval officer who was later to become an Oklahoma supreme court justice, believes he escaped execution only through Sakakida's intervention and assistance during the trial.

During this time, he established contact with the Filipino guerrilla underground, through which he funnelled important Japanese troop and shipping information to MacArthur in Australia. Sakakida's reporting from Manila also contributed to the destruction of a major Japanese task force headed for Davao by American submarines that lay in wait for the convoy. The huge Japanese setback abruptly ended the Japanese advance toward Australia, saving it from an invasion.

Sakakida then engineered a daring prison break from Mantinlupa Prison that freed the guerrilla leader Ernest Tupas and 500 of his men. Sakakida himself chose to remain behind in order to continue his intelligence activities from the enemy's midst. Thereafter, Sakakida was able to relay additional tactical information to MacArthur through the guerrillas.

After American forces invaded the Philippines, Sakakida escaped from the retreating Japanese forces at Baguio. During a firefight between American and Japanese troops, he suffered shrapnel wounds in the stomach. For the next several months Sakakida wandered alone in the jungle, living off the land, debilitated by his wound. He finally happened upon American troops, whom he eventually convinced of his identity. At that point, he was informed that the war was over.

Mr. President, this is a thumbnail sketch of Richard Sakakida's record of service in the Philippines. Naturally, it cannot do justice to the full tale of his courage, daring, sacrifice, and endurance. I have omitted many other incidents that displayed Sakakida's courage and fortitude. In fact, for a variety of reasons, including the secrecy surrounding his intelligence activities, his story has never been told in its entirety until relatively recently.

Mr. President, because Sakakida's activities were classified, few were in a position to recommend him for the Medal of Honor or other high award for valor. Much of what we know is largely anecdotal, because circumstances dictated that the presence of any official records would be damaging not only to his personal safety but also to the diplomatic and military efforts of the United States. Now, time has lifted the veil of secrecy, but many of the records of his activities are missing or were never kept; in addition, many witnesses who could have spoken of his exploits were either killed during the war or have since passed away in the period between the end of the war and the vitiation of the official blackout on Sakakida's operations. In spite of this catch-22 situation, I believe that ample evidence exists to support the awarding of the Congressional Medal of Honor to Colonel Sakakida. I believe this especially in view of the fact that the whole of his activities is informed by a supreme consistency, validated by objective events, that only the truth bears.

Nevertheless, after Colonel Sakakida's story was publicly revealed several years ago, and his record formally brought to the Army's attention by fellow veterans as well as by my Hawaii colleague, Representative PATSY MINK, the Army's Military Awards Branch refused to consider him for the Medal of Honor. The Army, citing the statute I have referred to earlier, stated that Sakakida's recommendation must have been submitted through official military channels shortly after the end of the war, by 1951. The Army refused to consider the special circumstances surrounding Sakakida's case, namely, that the nature of his intelligence work prevented his story from being appropriately considered prior to the delimiting date. In fact, as I have alluded to before, he was officially enjoined from talking about his intelligence activities during World War II until 1972, more than 20 years after the statutory deadline, when they were declassified and he was no longer bound by his secrecy oath. As a result, Colonel Sakakida's contributions to the allied victory have been overlooked by history and by his country.

This is a tragic oversight. Colonel Sakakida has been inducted into the Military Intelligence Hall of Fame. He has been honored repeatedly by his Japanese-American comrades-in-arms, notably members of the all-Nisei Military Intelligence Service and the 100th Infantry Battalion/442d Regimental Combat Team. At least one book, and chapters in many others, has been devoted to his wartime accomplishments. And, he has been awarded four different medals by the Philippine Government, including the Philippine Legion of Honor Award.

Thus, it seems that everyone but our own Government has recognized Colonel Sakakida's heroic military service in the Philippines. Indeed, the Army has never accorded Sakakida a single award or commendation for bravery associated with his undercover work in the archipelago.

Mr. President, I cannot help wondering if Colonel Sakakida's ethnic heritage has had something to do with this slight. While the Army apparently does not keep statistics on the ethnic breakdown of valor awards, one could make the case that Japanese-Americans have been underdecorated with respect to the Medal of Honor.

According to the book, ''Nisei: The Quiet Americans,'' by Bill Hosokawa, no Japanese-American had been awarded a Medal of Honor at the end of World War II. It was only when a member of the all-Nisei 100th/442d, the most highly decorated military unit in American history made this known to Congress that the medal was awarded posthumously to one of its members.

Hosokawa noted that a number of the Japanese-Americans in the 100th/442d were recommended for the Medal of Honor, but in each case, somewhere along the line, the request was denied and the lesser, Distinguished Service Cross presented instead. As of the late 1960s, according to Hosokawa, only one other Japanese-American received the Medal of Honor, for his service in the Korean war. I have been unable to find data on Vietnam or post-Vietnam conflicts, which is significant in itself. I have no doubt Nisei like Colonel Sakakida suffered racial prejudice at the onset of hostilities with Japan; the unjust internment of Japanese-Americans is proof enough of this.

There have been other allegations of discrimination in the medal awarding process. Apparently, only one black American received the Medal of Honor for World War I service, and that happened only after the Army conducted research to determine if there had been any barriers to black soldiers in the medal recognition process. And, recently, a retired lieutenant colonel who is African-American alleged he was denied the Medal of Honor for his heroics in Korea because of discrimination.

The Army has contracted a second study on black winners of the Medal of Honor in World War II that will presumably throw additional light on this sensitive subject. However, I also understand there are no plans to study Asian-Americans or any other ethnic group.

In any event, Mr. President, whether Colonel Sakakida is a victim of discrimination, an outdated law, or merely circumstance, his record is compelling enough to warrant formal review.

My bill would accomplish this by authorizing the President to award the Medal of Honor, Distinguished Service Cross, or Silver Star to Colonel Sakakida. The award would be made on the basis of a positive review of his military records by the Secretary of the Army, free of any statutory time restrictions that may pertain to these awards.

Let me stress that this bill does not direct the President to award the Medal of Honor to Colonel Sakakida outright, but to do so only if a review of his records determines that he is indeed deserving of the Nation's highest military decoration.

This bill has the strong support of the Japanese-American veterans organizations as well as the Japanese-American community at large. I also have a letter of support from the Philippine Embassy for this effort. I ask unanimous consent that these messages of support, as well as a copy of the bill, be included in the RECORD at the conclusion of my remarks.

Mr. President, I do not offer this legislation entirely in Richard Sakakida's behalf. For Richard Sakakida is already amply bestowed with badges of honor—in the scars that deface his body, in the medication he takes to dull the constant pain he suffers from his wounds, and in the silent knowledge that he rendered extraordinary services to the Nation in its time of need. Rather, I offer this legislation in our collective behalf. For, in honoring individuals such as Richard Sakakida, we honor ourselves—by reaffirming the value of the freedoms that men and women like him have sacrificed so much to preserve.

In closing, I should note that since I last introduced this bill, Colonel Sakakida has suffered serious health problems. It is therefore important that Congress act with dispatch, if Colonel Sakakida is to be appropriately honored for his courageous actions.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

JAPANESE AMERICAN CITIZENS LEAGUE,
San Francisco, CA, January 31, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: The Japanese American Citizens League (JACL), the largest Asian Pacific American civil rights organization in the United States, strongly supports your legislative initiative to require the United States Army to consider awarding the Congressional Medal of Honor to retired Air Force Lieutenant Colonel Richard M. Sakakida in recognition of his work as a Military Intelligence Service (MIS) Officer.

LTC Sakakida was among the first to be recruited for the all-Nisei MIS unit which provided invaluable intelligence support to combat units throughout the Pacific during World War II. His extraordinary exploits while serving as an undercover agent in the Philippines are legendary and have been well chronicled. The government of the Philippines recently awarded him the Philippine Legion of Honor for his heroic actions as an undercover agent. He was also honored by being installed in the MIS Hall of Fame.

LTC Sakakida is worthy of recognition by the United States Army for his meritorious service to the military effort during World War II. JACL enthusiastically supports your efforts to secure proper acknowledgement for him.

Sincerely yours,

RANDALL SENZAKI,
Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, DC, July 28, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: The Japanese American Citizens League (JACL), the nation's largest Asian Pacific American civil rights organization, strongly supports your legislative initiative to require the United States Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lieutenant Colonel Richard M. Sakakida in recognition of his work as a Military Intelligence Service (MIS) Officer.

Colonel Sakakida was among the first to be recruited for the all-Nisei MIS unit which provided invaluable intelligence support to combat units throughout the Pacific during World War II. His extraordinary exploits while serving as an undercover agent in the Philippines are legendary and have been well chronicled. The government of the Philippines recently awarded him the Philippine Legion of Honor for his heroic actions as an undercover agent. He was also honored by being installed in the MIS Hall of Fame.

Colonel Sakakida is worthy of recognition by the United States Army for his meritorious service to the military effort during World War II. JACL enthusiastically applauds your efforts to secure proper acknowledgement for him.

Please let me know if there is anything we can do to support your efforts.

Sincerely yours,

KAREN K. NARASAKI,
Washington, DC Representative.

NATIONAL ASIAN PACIFIC
AMERICAN LEGAL CONSORTIUM,
Washington, DC, August 1, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: On behalf of the National Asian Pacific American Legal Consortium, I am writing to support your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lieutenant Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-nisei Military intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lieutenant Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully acknowledged or appreciated.

Lieutenant Colonel Sakakida's incredible exploits while serving as an undercover agent in the Philipines are legendary indeed. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippine Legion of Honor. It is time the U.S. government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lieutenant Colonel Sakakida. The Consortium fully supports your initiative.

The National Asian Pacific American Legal Consortium is a not-for-profit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans through litigation, advocacy, public education, and public policy development.

Very truly yours,

PHILIP TAJITSU NASH, ESQ.,
Executive Director.

442ND VETERANS CLUB,
Honolulu, HI, July 27, 1994.

Hon. DANIEL AKAKA,
U.S. Senate, Washington DC.

DEAR SENATOR AKAKA: The 442nd Veterans Club supports your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lt. Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-Nisei Military Intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lt. Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully appreciated.

Lt. Col. Sakakida incredible exploits while serving as an undercover agent in the Philippines are the stuff of legend. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippine Legion of Honor. It is time the United States government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lt. Col. Sakakida. The 442nd fully supports your initiative.

Sincerely,

HENRY KUNIYUKI,
President.

ROCKY MOUNTAIN MILITARY INTELLIGENCE SERVICE VETERANS CLUB,
Denver, CO, February 10, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: Our MIS Veterans club is pleased to resubmit a letter in behalf of your efforts to gain belated but deserved official recognition for Richard Sakakida for his heroic military actions before and during World War II in the Philippines. Clearly Richard Sakakida's efforts and contributions toward a just victory deserve the highest awards that a grateful nation can bestow.

It is perhaps fitting to recognize that our nation is a great social experiment—proving to a world torn by ethnic and cultural strife that citizens from diverse origins and environments can live together and can demonstrate their courage and loyalty to that experiment. Our heroes can come from a variety of sources, and Richard Sakakida's humble but somewhat typical background adds to that variety. It is also fitting that this nation should seek out, recognize and honor those who rise above their challenges to add their names to our roster of heroes. It is unfortunate that the passage of time often dims our ardor for recognition because too often we are a nation of instantaneous celebrities. It is also unfortunate that there are no official records of Richard Sakakida's exploits because the circumstances of his actions precluded their presence. These conditions do not however diminish the magnitude and heroism of his actions and this nation can do no less than to acknowledge his valiant contributions.

All of our club members share a military intelligence background and we have lived with the knowledge that the use of a foreign language in a military confrontation is not given adequate recognition. The ability to use that language is often the crucial difference between success and failure of a military operation. Richard Sakakida's language skills enabled him to earn significant military gains as well as his own survival in an extended and tense situation. We heartily endorse and encourage your efforts to gain belated but hard earned recognition for Richard Sakakida.

Sincerely,

DR. SUEO ITO,
President.

ROCKY MOUNTAIN MILITARY INTELLIGENCE SERVICE VETERANS CLUB,
Denver, CO, August 14, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: Our MIS Veterans Club has been advised of your very laudable efforts in getting official recognition for Richard Sakakida for his valiant and largely unheralded military efforts before and during World War II in the Philippines. Clearly Richard Sakakida's heroic actions merit the highest recognition that this nation can bestow.

We recognize that the accounts of Sakakida's contributions are largely anecdotal because his circumstances dictated that the presence of any official records would be damaging not only to his personal safety but also to the diplomatic and military efforts of the United States. Also his actions during and after capture by the Japanese precluded any written records.

Our club is composed of veterans with a Military Intelligence background and we all recognize the important contributions made by the citizens of the United States through their knowledge and use of language. We therefore heartily endorse and encourage your efforts in securing belated but well-earned recognition for Richard Sakakida.

Sincerely,

Dr. SUEO ITO,
President.

444D VETERANS CLUB,
Honolulu, HI, January 26, 1995.

Hon. DANIEL AKAKA,
U.S. Senate, Hart Senate Office Building, Washington, D.C.

DEAR SENATOR AKAKA: The 442nd Veterans Club supports your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lt. Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-Nisei Military Intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lt. Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully appreciated.

Lt. Col. incredible exploits while serving as an undercover agent in the Philippines are the stuff of legend. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippines Legion of Honor. It is time the United States government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lt. Col. Sakakida. The 442nd fully supports your initiative.

Sincerely,

HENRY KUNIYUKI,
President.

JAPANESE-AMERICAN VETERANS ASSOCIATION OF WASHINGTON, D.C.,
Vienna, VA, July 5, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, D.C.

DEAR SENATOR AKAKA: The Japanese American Veterans Association of Washington, D.C. stands in complete support of your effort to have our country award its highest military decoration to Lt. Col. Richard M. Sakakida, USAF (Ret.), for his extraordinary service to country and his heroic acts of self-sacrifice while in the Philippines as an undercover agent of the U.S. Army during World War II.

A review of the remarkable deeds and unshakable devotion to duty through the most inhuman of treatment and adverse conditions ranks Lt. Col. Sakakida among those who have served ''above and beyond'' the call of duty.

The passage of years or the resultant lack of the necessary documentation must not be the basis of denying a great American soldier his due recognition by a nation which he served to loyally and courageously.

Sincerely,

SUNAO ISHIO,
Col. AUS (Ret.),
President.

JAPANESE-AMERICAN VETERANS ASSOCIATION OF WASHINGTON, DC,
Vienna, VA, January 28, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: The Japanese-American Veterans Association of Washington, D.C., whose members include many veterans of the Military Intelligence Service of the United States Army in the Pacific Theater of Operations during World War II, enthusiastically supports your legislative efforts to encourage the Department of Defense to consider the awarding of the Congressional Medal of Honor to LTC. Richard M. Sakakida, USAF (Ret), in recognition of his heroic deeds as an officer of the US Armed Forces in the Philippines during WW II.

The Japanese American Veterans Association of Washington, D.C. has been very aware of LTC Sakakida's heroic efforts and, accordingly, honored him as one of the first recipients of its American Patriot Award in October of 1993.

LTC Sakakida has been honored with numerous commendations for his dedicated and noteworthy services and the Congressional Medal of Honor would most certainly be the culmination of national recognition of this gallant warrior's efforts.

The Japanese American Veterans Association of Washington, D.C. appreciates and commends your efforts to obtain proper acknowledgement and commendation for LTC Sakakida, which he so rightfully deserves.

If there is anything more we can do to support your efforts, please do not hesitate to call me.

Sincerely yours,

HENRY S. WAKABAYASHI
Colonel USAR (Ret.),
President.

JAPANESE-AMERICAN VETERANS ASSOCIATION,
January 21, 1995.

DANIEL K. AKAKA,
U.S. Senator from Hawaii.

DEAR SENATOR AKAKA: I consider it a great honor to support the effort to have the highest military award bestowed upon Lt. Col. Richard M. Sakakida, one of the forgotten and unsung heroes of World War II.

In more ways than one, Lt. Col. Sakakida placed devotion to duty and country above all else, disregarding any personal harm or danger to himself. When the opportunity came for him to evacuate from the Philippines for Australia as part of General MacArthur's group, he turned it down to give his place to a fellow nisei. He knew full well the horrible fate that awaited him as a prisoner of the Japanese, yet he felt that he would be

more useful by remaining behind. Lt. Col. Sakakida suffered months of indescribable torture, but he never broke. Eventually his captors accepted his cover story that he was an army deserter and was given a certain degree of freedom and responsibility. He continued to gather and send valuable information on the Japanese forces to General MacArthur's HQ in Australia through the Filipino guerrilla network. One of the most vital pieces of intelligence which he sent was about the formation of a Japanese invasion task force against Australia. Corroboration of this plan by other sources resulted in a successful Allied action against this invasion effort. While working with the guerrillas, Lt. Col. Sakakida planned and carried out the escape of several hundred Filipino Guerrillas from the prison camp. He managed to escape with a group of guerrillas, but was wounded in the stomach and separated from them in the process. Already severely wounded, Lt. Col. Sakakida's indomitable will to survive carried him through to eventual rescue by U.S. forces.

The requirement of documentation should be waived in this case because of the highly classified nature of the undercover work involved and because of the lapse of over half a century since these events occurred. It should be noted that the Philippine Government has recognized Lt. Col. Sakakida's service in the Philippine liberation campaign and has awarded him the Legion of Honor (Degree of Legionnaire).

Lt. Col. Sakakida's unparalleled and unselfish service to his country under the most adverse of situations with complete disregard for personal safety and survival is certainly ''above and beyond'' the call of duty. It calls for his country's gratitude and recognition by the awarding of the highest military decoration commensurate with his service record.

Sincerely,

SUNAO (PHIL) ISHIO
Col. AUS (Ret.),
Founder and First President.

M.I.S. ASSOCIATION OF NORTHERN CALIFORNIA, INC.,
San Francisco, CA, January 25, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: This letter is in our support of a private bill for LTC. (Ret) Richard M. Sakakida to award him the Congressional Medal of Honor, or other appropriate medal for valor in recognition for his meritorious services as an undercover Military Intelligence Service (MIS) agent in the Philippines during World War II.

On behalf of the M.I.S. Association of Northern California, I wish to express our wholehearted appreciation and support your worthwhile and meaningful special legislation. Richard Sakakida is a member of our organization and over the past four years, we have endeavored to tell his story and seek recognition of his extraordinary service to his country in time of war. As you may know, he was the keynote speaker of the 50th MIS Anniversary Reunion in San Francisco/Monterey in November 1991. In April 1994 a videotape was made, entitled ''Mission to Manila—The Richard Sakakida Story''. A copy was delivered to your office.

Also, for the past three years, members of MIS NORCAL have been engaged in two separate actions concerning Richard Sakakida recommendation for the Award of Purple Heart for wounds sustained in the Philippines during WWII and an award for Valor. The latter is for heroic personal sacrifice, including the risk of his own life, to protect and save the lives of fellow American servicemen, while he, himself as a POW of the Japanese Military Forces. We have an unsung hero in our midst, and we welcome this opportunity to assist and support you in obtaining recognition for the highest military decoration of our country for Richard Sakakida.

Sincerely,

THOMAS T. SASAKI,
President.

MIS NORTHWEST,
Seattle, WA, July 9, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: The Military Intelligence Service (MIS) Northwest Association wholeheartedly supports the effort to bestow upon Lt. Col. USAF (Ret.) Richard Sakakida the Congressional Medal of Honor.

We understand that this effort has been going on for a number of years without success mainly because of the passage of time and the lack of necessary documentation. Richard Sakakida is a unique American Hero. Time should not be a factor. It is never too late to acknowledge his heroic actions in the Philippines as a CIC agent which could only be classified as services performed ''above and beyond the call of duty.''

Documentation of his exploits should be properly recorded in the annals of U.S. military intelligence. Any lack of needed documentation could be supplemented by the records of the Philippine government which saw fit to award him the Philippine Legion of Honor medal. Additional documentation could be mustered from some of the 500 Filipino resistance fighters that he liberated.

We appreciate and endorse your effort to have the U.S. Army rightfully recognize the heroism of Richard Sakakida.

Yours truly,

KENICHI (KEN) SATO,
President.

MIS-NORTHWEST ASSOCIATION,
Seattle, WA, January 28, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: The Military Intelligence Service (MIS) Northwest Association wholeheartedly supports the effort to bestow upon Lt. Col. USAF (Ret.) Richard Sakakida the Congressional Medal of Honor or other appropriate medal for valor in recognition for his meritorious service during WW II.

We understand that this effort has been going on for a number of years without success mainly because of the passage of time and the lack of necessary documentation. Richard Sakakida is a unique American Hero. Time should not be a factor. It is never too late to acknowledge his heroic actions in the Philippines as an undercover Military Intelligence Service (MIS) agent which could only be classified as services performed ''above and beyond the call of duty.''

Documentation of his exploits should be properly recorded in the annals of U.S. military intelligence. Any lack of needed documentation could be supplemented by the records of the Philippine Government which saw fit to award him the Philippine Legion of Honor medal. Additional documentation could be mustered from some of the 500 Filipino resistance fighters that he liberated.

We appreciate and endorse your effort to introduce legislation to rightfully recognize the heroism of LTC Richard Sakakida.

Yours truly,

KENICHI (KEN) SATO,
President.

M.I.S. ASSOCIATION OF NORTHERN CALIFORNIA, INC.,
San Francisco, CA, July 14, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: I am in receipt of a letter from Mr. Sunao Ishio, President of the Japanese American Veterans Association of Washington, D.C. (JAVA) In this letter he describes your initiative with the backing of other concerned members of Congress, to introduce a private bill for LTC. (Ret.) Richard M. Sakakida to award him the Congressional Medal of Honor.

On behalf of the M.I.S. Association of Northern California, I wish to express our wholehearted appreciation and support your worthwhile and meaningful special legislation. Richard Sakakida is a member of our organization and over the past three years, we have endeavored to tell his story and seek recognition of his extraordinary service to his country in time of war. As you may know, he was the keynote speaker of the 50th MIS Anniversary Reunion in San Francisco/Monterey in November 1991. In April 1994 a videotape was made, entitled ''Mission to Manila—The Richard Sakakida Story''. A copy was delivered to your office.

Also, for the past two years, members of MIS NORCAL have been engaged in two separate actions concerning Richard Sakakida recommendation for the Award of Purple Heart for wounds sustained in the Philippines during WWII and an award for Valor. The latter is for heroic personal sacrifice, including the risk of his own life, to protect and save the lives of fellow American servicemen, while he, himself as a POW of the Japanese Military Forces. We have an unsung hero in our midst, and we welcome this opportunity to assist and support you in obtaining recognition for the highest military decoration of our country for Richard Sakakida.

Sincerely,

THOMAS T. SASAKI,
President.

CHICAGO-NISEI POST NO. 1183,
Chicago, IL, August 4, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: As an American Legion Post consisting primarily of Nisei veterans of World War II (and subsequent conflicts), we point with considerable pride at the accomplishments of Richard Sakakida, whose remarkable achievements during WWII went unheralded until recently.

By way of further background, enclosed is an article which appeared in a CIC Journal in 1991. Those of us who met him at recent linguist reunions were overwhelmed with the story.

Further delay in recognition of his heroic exploits would be unconscionable, and we are in full support of your introduction of a private Bill to award him (albeit belatedly) the Congressional Medal of Honor.

Very truly yours,

SAM YOSHINARI,
Post Commander.

OFFICE OF VETERANS AFFAIRS,
EMBASSY OF THE PHILIPPINES,
Washington, DC, July 25, 1994.

Mr. JOHN A. TAGAMI,
Legislative Assistant, Office of Senator Daniel K. Akaka, Washington, DC.

DEAR MR. TAGAMI: In August 1993 I recommended the award of Philippine Legion of Honor to Lt. Col. Richard Sakakida on the basis of the Military Intelligence report compiled by Diane L. Hamn, (copy enclosed). My recommendation was addressed to his

Excellency President Fidel V. Ramos, President of the Philippines through the Secretary of National Defense. This was referred to G2, Armed Forces of the Philippines which went over the attached report. I do not know what exactly happened. I can only surmise that the herein report had been confirmed by records we have in the Philippines and President Fidel V. Ramos approved the award.

Let me tell you that at one time, I was informed that the recommendation may not be approved because of the prescriptive period during which the achievement may be recognized. I made appropriate representation that this prescriptive period may be waived, my reason being that the recommendation for the award could not be made earlier because the record of Lt. Col. Sakakida had been declassified very much later.

I understand from Ms. Barbara Joseph that the same objection is being raised in connection with this award of Congressional Medal of Honor. Maybe the same argument may be used.

Sincerely yours,

TAGUMPAY A. NANADIEGO,
BGen, AFP (Ret), Special Presidential Representative/Head, Office of Veterans Affairs, WDC.

Falls Church, VA, February 27, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: If you recall, His Excellency President Fidel V. Ramos of the Republic of the Philippines approved the award of the Philippine Legion of Honor (Degree of Legionnaire) to Lt Colonel Richard M. Sakakida, USAF (Ret) for his role in the Philippine campaign during WWII. The formal presentation was held at the Carlos P. Romulo Hall of the Philippine Embassy, Washington, D.C. on April 15, 1994. You were represented at the awarding ceremony by Mr. John Tagami who read your message and that of Senator Daniel Inouye.

I am enclosing herewith a copy of the General Orders issued by the General Headquarters, Armed Forces of the Philippines announcing the award.

In my private capacity as a former enlisted man in the 31st Division (PA) called and ordered into the service of the United States Army Forces in the Far East (USAFFE) in 1942 and as a guerrilla intelligence officer of the Vera's Tayabas Guerrillas, a combat batallion which was recognized by the Sixth Army, USA in 1945, I join in the recommendations for the award of the Congressional Medal of Honor to LtCol. Sakakida.

Enclosed is a brief summary on LtCol. Sakakida's role in the Philippine campaign which is chronicled in the intelligence operation reports of the Armed Forces of the Philippines.

Sincerely,

TAGUMPAY A. NANADIEGO,
BrigGeneral, AFP (Ret).

AWARD OF THE PHILIPPINE LEGION OF HONOR—(DEGREE OF LEGIONNAIRE)

By direction of the President, pursuant to paragraph 1–6e, Section II, Chapter 1, Armed Forces of the Philippines Regulations G 131–053, this Headquarters, dated 1 July 1986, the PHILIPPINE LEGION OF HONOR in the degree of Legionnaire is hereby awarded to Mr. Richard M. Sakakida for exceptionally meritorious conduct in the performance of outstanding service to the Filipino—American freedom fighters as the United States undercover counterintelligence agent from 22 April 1941 to 20 September 1945. At the outbreak of World War II, then Sergeant Sakakida was shipped out from Honolulu to the Philippines to monitor the activities of the Japanese community in Manila. When Corregidor surrendered to the Japanese Imperial Forces in 1942, he was taken as prisoner of war, was tortured and brought to Bilibid Prison. Later, he was utilized as interpreter for court martial proceedings for American and Filipino prisoners and on many occasions, interceded on behalf of the POWs by translating testimony in their favor. He engineered and successfully carried out a daring prison break from Muntinlupa Prison, releasing over 500 Filipino guerrillas with the assistance of some Filipinos. In July 1945, after his escape from prison, he was wounded in a skirmish between Filipino guerrillas and Japanese forces. He rejoined General Douglas MacArthur's returning forces in the liberation of the Philippines after a long trek across miles of jungle terrain. By these achievements, Mr. Sakakida contributed immeasurably to the liberation of the Philippines, thereby earning for himself the respect and admiration of the Filipino people.

By Order of the Secretary of National Defense.

LISANDRO C ABADIA,
General, AFP, Chief of Staff.

RICHARD M. SAKAKIDA

Richard Sakakida's undercover intelligence work during World War II parallels Arthur Komori's in that both were from Hawaii and were selected over a number of candidates in March 1941 for the secret CIP (Counter Intelligence Police) undercover mission, until they sneaked ashore in Manila.

Once landed, Sakakida, pretending to be a draft evader from Hawaii, checked into the Nishikawa Hotel. He soon got a clerical job there checking passports and filling out passport entry forms of visiting Japanese. He obtained valuable information during this time. He even found work as a sales representative of Sears Roebuck to complete his cover, while he wove himself into the fabric of Manila's Japanese business community, passing on his findings to CIP chief, Major Nelson Raymond. One of Sakakida's assignments was to befriend a Nisei serving as local advisor to the Japanese Consulate in Manila and collect information from that source.

On December 8, 1941, when the Japanese bombed Manila and the United States declared war on Japan, Sakakida, as previously planned, voluntarily turned himself in at the Nippon Club Evacuation Center with the rest of the Japanese in Manila. One day, Sakakida, escorted by the Philippine Constabulary, went marketing for foodstuff for the other detainees. When he stopped at the Nishikawa Hotel to pick up his belongings, the Filipino Secret Service arrested him as a spy and hauled him to Philippine Constabulary headquarters for interrogation. U.S. CIP agents eventually rescued him.

Back in military uniform with the CIP Sakakida interrogated Japanese civilians until December 23, 1941, when the advancing Japanese Army forced the evacuation of the American military in Manila to Bataan and Corregidor. On Bataan, Sakakida interrogated Japanese POWs, translated Japanese diaries and combat documents, prepared propaganda leaflets in Japanese, and called upon the Japanese to surrender by loudspeaker broadcasts Assisting Army Signal Intelligence, he monitored Japanese air-ground communications and deciphered Japanese codes. He preformed critical intelligence work in Malinta Tunnel on Corregidor which came under intense daily bombing by Japanese planes.

After three months of bitter fighting, the lack of relief supplies and replacements forced the exhausted, malnourished, disease-ridden Americans to capitulate. Bataan fell on April 8, 1942, and 76,000 defeated American and Filipino troops embarked upon the infamous ''Bataan Death March'' that killed over half their numbers. General MacArthur ordered the evacuation to Australia of his two valuable Nisei linguists, Komori and Sakakida, but the latter chose to give up his seat on the escape aircraft to a civilian Nisei. With no chance, therefore to escape, Sakakida became one of General Wainwright's tragic survivors of Corregidor to surrender to the Japanese Army.

As the only American Nisei POW known to have been captured by the Japanese, Sakakida spent six months incarcerated on Corregidor. The Kenpei Tai quizzed him mercilessly and tortured him. Sakakida steadfastly endured, adhering to his story of being a civilian, forced to work for the U.S. Army after the war began. In December 1942, Sakakida was thrown into Bilibid Prison. The enemy questioned Sakakida's renunciation of his Japanese citizenship prior to the war but, because he was born of Japanese parents, considered he could be tried for treason. He faced an almost certain death sentence if tried before a Japanese military tribunal. The Japanese 14th Army HQ verified from the Foreign Minister that Sakakida's Japanese citizenship had indeed been voided (fortuitously, Sakakida's mother had cancelled his dual citizenship in August 1941 after his departure). On February 11, 1943, ''Kigensetsu,'' (Empire Day), Sakakida was advised the treason charge would be dropped. Despite the hideous torture suffered at the hands of his Japanese captors, the marks of which remain evident today, Richard Sakakida never broke down and never revealed his undercover role and mission against the Japanese.

Sakakida was then assigned to work for Chief Judge Advocate Col. Nishiharu and remained under continued surveillance, subjected to periodic attempts at entrapment to elicit his true identity. During this period, Sakakida established contact with the Filipino guerrilla underground through which he managed to funnel vital military information to MacArthur's HQ in Australia. His most crucial report cited Japanese troop and shipping activity. The report also advised of preparations for an invasion of Australia to be launched from Davao, Mindanao, by the Japanese 35th Army with 15 troop transports and destroyers. Sakakida later learned from an officer of the sole surviving ship that American submarines had annihilated that convoy, probably reported in WW II history as the Battle of the Bismarck Sea.

Sakakida also engineered a daring prison break from Muntinglupa Prison by disguising as a Japanese security officer. The escape freed guerrilla leader Ernesto Tupas and 500 of his men. Tupas escaped to the Rizal mountains, where he established radio contact with MacArthur's HQ through which Sakakida could relay more tactical information gleaned from the 14th Army HQ where he worked. This could be the only instance in World War II where a U.S. Military intelligence agent relayed information from the very heart of the enemy's headquarters.

After October 1944, when the American forces invaded Leyte and American planes bombed Manila, inflicting heavy damage, General Yamashita moved his headquarters north to Baguio. As the American invading forces encircled the beleagured Yamashita's 14th Army, Sakakida encountered increasing hostility from his captors and decided to make his break. In June 1945, he escaped from the retreating Japanese forces and fled into the hills where he joined a band of guerrillas. During a firefight between the guerrillas and the Japanese a shell fragment hit Sakakida in the stomach. The retreating guerrillas had to abandon him. For the next

several months, Sakakida wandered alone through the mountainous jungle, scrounging for food from the wild. He was weakened with his stomach wound and ravaged by malaria, dysentery and beriberi. His hair and beard grew long and wild; insect bites and sores covered his skin. His clothes hung in tatters; semi-starvation emaciated him.

One day, unaware that the war had already ended, he saw a group of approaching soldiers wearing unfamiliar uniforms and deep helmets, unlike the pie-plated American helmets of 1942. He thought they were Germans. But his heart leaped as he heard them speaking English. Sakakida emerged from his jungle hiding, waving his arms and yelling ''Don't shoot!'' and then fervently convinced the dubious American GIs that this ragged and haggard Japanese-looking soldier was an American sergeant captured by the Japanese at Corregidor. He begged them to call the CIC to verify his claim. Two hours later two CIC lieutenants drove up in a jeep, leaped out to identify him and welcomed him back to the CIC ranks. They took him back to the field office of the 441st Detachment where Sgt. Richard Sakakida was home at last. His long, lonely, fearful, tortuous ordeal as an undercover agent in the Philippines finally ended. On July 1, 1988, Lt. Col. Richard Sakakida was inducted into the Military Intelligence Hall of Fame at Fort Huachuca, Arizona.●

ADDITIONAL COSPONSORS

S. 44

At the request of Mr. REID, the names of the Senator from Washington [Mr. GORTON), the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 44, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

S. 145

At the request of Mr. GRAMM, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 145, a bill to provide appropriate protection for the constitutional guarantee of private property rights, and for other purposes.

S. 190

At the request of Mr. PRESSLER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 190, a bill to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes.

S. 216

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 216, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 256

At the request of Mr. DOLE, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 327

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 374

At the request of Mr. KOHL, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 374, a bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes.

S. 403

At the request of Mr. AKAKA, the names of the Senator from Vermont [Mr. LEAHY] and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 403, a bill to amend title 38, United States Code, to provide for the organization and administration of the Readjustment Counseling Service, to improve eligibility for readjustment counseling and related counseling, and for other purposes.

S. 447

At the request of Mr. INHOFE, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 447, a bill to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes.

S. 503

At the request of Mrs. HUTCHISON, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 503, a bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat in order to ensure that constitutionally protected private property rights are not infringed, and for other purposes.

S. 530

At the request of Mr. GREGG, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, March 15, 1995, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON FINANCE

Mr. BOND. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Wednesday, March 15, 1995, in room 215 of the Dirksen Senate Office Building, beginning at 9:30 a.m., to conduct a markup on H.R. 831.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, March 15, 1995, beginning at 2:30 p.m., in room 485 of the Russell Senate Office Building on S. 349, a bill to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on effective health care reform in a changing marketplace, during the session of the Senate Wednesday, March 15, 1995, at 9:30 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BOND. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet for the session of the Senate Wednesday, March 15, 1995, at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. BOND. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces of the Committee on Armed Services be authorized to meet at 9:30 a.m. on Wednesday, March 15,