RECESS

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

Thereupon, at 12:43 p.m., the Senate recessed until 2:18 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

IN REMEMBRANCE OF THE TRAGEDY IN LITTLETON, COLORADO

The PRESIDING OFFICER. Pursuant to a unanimous-consent request, the Chaplain is recognized for a special prayer.

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

Let us pray together.

O Gracious God, our hearts break over what breaks Your heart, and we join our hearts with the broken hearts of the families and friends of the teenagers and the teacher who were killed in the tragic shooting by two students at the Columbine High School in Littleton, CO.

We have been shocked by this senseless expression of rage and hatred in the twisted and tormented minds of these young men. Comfort the parents who lost their children, both as victims and perpetrators. Help us all to deal with the deeper issues of the need for moral renewal in our culture.

O God, bless the children of our land. May we communicate to them Your love and Your righteousness so that they have a rudder for the turbulent waters of our time and are able to present them with the charts to make it through these difficult waters.

O Gracious God, help us to communicate Your commandments and help them to know the joy of living in faithfulness with You. In our quest to separate church and State, there are times when we have divided God from our culture. Now when there is nowhere else to turn, we return to You.

O dear God, heal our land. In Your holy name. Amen.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I understand the leadership accommodated Senator CAMPBELL's and my request to observe a moment of silence out of respect for the victims of the tragic shooting at Columbine High School in Littleton, CO.

I also understand that later today the Senate will consider a resolution expressing sorrow and offering condolences to the families and friends and students, all of Littleton, CO. I will address the Senate in greater detail at that time.

In the meantime, I yield the floor to my senior colleague in order for him to request a moment of silence.

Mr. CAMPBELL. Mr. President, I thank my colleague. I, too, thank the leadership for affording the Senate an opportunity to express our profound sorrow and to offer condolences to the families and friends of the fallen people of Littleton, CO.

I understand that a resolution addressing this issue will arrive from the House of Representatives at about 4:30 today. I expect that many Members may want to make comments at that time.

The tragic truth is that the angels are now carrying the souls of 13 innocent people to the everlasting glory of heaven. A resolution alone would never express the degree of sorrow we feel. Certainly all of America has much to do to heal our Nation and to rid ourselves of hate and vengeance.

Until that resolution is pending, and in order to observe, acknowledge, and honor a moment of silence called for throughout the State of Colorado, I now ask that the Senate observe a moment of silent prayer for 2 minutes.

The PRESIDING OFFICER. The Senate will now observe a moment of silence.

[Period of silence.]

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, I know that a number of Senators do wish to express their concern, sympathy, and great regret with regard to the incident for which we are all so very sorry, and suffering. As Senators ALLARD and CAMPBELL said, I think we can save that until we have the resolution up later this afternoon when Senators will have the opportunity to speak on this matter. I will be speaking with Senator DASCHLE and we will be talking about an appropriate way for the Senate to consider this matter for a reasonable period of time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Y2K ACT

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, I ask unanimous consent that all remaining amendments in order to S. 96 be relevant to the pending MCCAIN amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. LOTT. Mr. President, I regret having to file a cloture motion. I hoped we would not have to do that, that we could get an agreement on how to proceed, and that the amendments would be relevant. But since we have not been able to, with the objection just heard, I have no alternative. Therefore, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending amendment to Calendar No. 34, S.96, the Y2K legislation:

Senators Trent Lott, John McCain, Rick Santorum, Spence Abraham, Judd Gregg, Pat Roberts, Wayne Allard, Rod Grams, Jon Kyl, Larry Craig, Bob Smith, Craig Thomas, Paul Coverdell, Pete Domenici, Don Nickles, and Phil Gramm.

Mr. LOTT. Mr. President, I know there is a sincere effort underway on both sides of the aisle to work out an agreement on this Y2K legislation. I know that will continue. But we need to make progress, or have the opportunity for a cloture vote in the meantime, or, in case that doesn't work out, you always have the option, if we get everything worked out, to vitiate the cloture vote, or we could move to a conclusion earlier. If we can get an agreement worked out and conclusion on Wednesday, that would be ideal.

But, barring that, a cloture vote will occur on Thursday. As soon as the time for the vote has been determined, after consultation with the Democratic leader, all Senators will be notified.

CALL OF THE ROLL

In the meantime, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

AMENDMENT NO. 268 TO AMENDMENT NO. 267

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. I send a first-degree amendment to the pending amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 268 to amendment No. 267.

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

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

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

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 269 TO AMENDMENT NO. 268

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. Mr. President, I send a second-degree amendment to the pending first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 269 to amendment No. 268.

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

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

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

AMENDMENT NO. 270 TO AMENDMENT NO. 267

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. Mr. President, I send a first-degree amendment to the language proposed to be stricken.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 270 to amendment No. 267.

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

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

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

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 271 TO AMENDMENT NO. 270

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from the year 2000 problem, related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. LOTT. I send a second-degree amendment to the language proposed to be stricken.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. LOTT) proposes an amendment numbered 271 to Amendment No. 270.

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

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

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

Mr. LOTT. Mr. President, if I could make a couple of observations with regard to the schedule, I know Members are interested in a variety of very important issues they wish to be heard on. I have to be sympathetic to those requests. We don't have it worked out yet.

But I am discussing with Senator DASCHLE the possibility of having some measure on the floor of the Senate later on this week which would be an opportunity for further discussion and perhaps votes with regard to the Kosovo matter. We wish it to be a bipartisan resolution that allows Senators to state their position and to allow the Senate to take a vote on exactly how they wish to proceed at this point with regard to Kosovo. We will have to work through that. Hopefully, we can take it up Thursday and complete it Thursday night, or Friday, or later, if the Senators so desire.

On another matter, I know there are Senators who have a real desire to say something and have a policy discussion about what has happened in Colorado. I ask my colleagues, let's give this a moment. Let's allow a period of mourning and grief. Let's allow these families to bury their children. Let's all wait to see more about what happened and ask not only what but why.

Then 2 weeks from today, if the Senate thinks well of it, we will look for a vehicle—and we have one in mind, perhaps a juvenile justice bill—that we could take up, and the Senate would then have an opportunity for debate, have amendments, and have votes.

I think we need a period of time to think this through and allow our country, collectively, to have a period of mourning and then see if there is something we can do. I don't think the answer is here. I think the answer is out across America.

I wanted the Senators to know I recognize their desires and I am trying to find a way to accommodate those desires. I ask, also, that we must continue to work on Y2K and find a way to complete it without getting into a myriad of subsidiary issues and complete our work by Wednesday.

Mr. KENNEDY. Will the Senator yield?

Mr. LOTT. Mr. President, I am happy to yield to the Senator.

Mr. KENNEDY. Mr. President, I heard the majority leader. There are many Members who, obviously, agree with the majority leader and share the sentiments expressed here on the floor of the Senate a few moments ago in the moments of silence, and the very superb prayer of the chaplain in reaching out to those families. However, there are Members who want to at least consider some legislation dealing with responsibility in the area of firearms.

Is the leader now indicating to Members he will give us the opportunity to have some debate on those measures, and other measures, as well, within a period of 2 weeks? Measures that could help and assist parents, families and schools. Measures that are balanced and permit Members to reach across the aisle to try and work out bipartisan approaches? Could the majority leader indicate now whether we will have that opportunity and give assurance to the American people that the subject matter which is No. 1 in the minds of all families and children across this country—at least we will have the opportunity in the U.S. Senate to debate some proposals and to reach resolutions of those.

Mr. LOTT. Mr. President, in response to the Senator's question, I think it is always incumbent upon the leadership to make sure we proceed in an appropriate way and that Senators have an opportunity to express their views and offer amendments on issues of policy. I think we are doing that. We have appropriately had a moment of silence and a prayer for the children and the families, and for our country. We are going to have a resolution this afternoon officially expressing our regret and sympathy.

I have asked that we have a brief period of mourning where we don't rush to judgment before we start flinging amendments at each other. I mentioned the idea to Senator DASCHLE moments ago in which I said that 2 weeks from today we will look at bringing up a particular piece of legislation. I don't want to say it will be exactly that day or exactly that piece of legislation because Senator DASCHLE needs to confer with a lot of Members on that side.

However, it is my intent, that 2 weeks from today we give Senators an opportunity to offer amendments, thoughts and policy issues they wish to have addressed. I think the timing would be appropriate and I think that the issue or the issues are appropriate for Members to debate and vote on.

Mr. KENNEDY. If the Senator will yield for a moment, with those assurances, I have worked with a number of our colleagues—they may have differing views—and I think the assurances of the majority leader that the Senate would have an opportunity to debate legislation with regard to the limitations on weapons and also support and assistance for families and schools, and that we will have debate and resolution of some of those measures, then, I think at least I will look forward to that opportunity.

I think with the assurance of the majority leader—I know the Senate Democratic leader wanted to talk to colleagues—it is my certain belief the Democratic leader would support the majority leader in that undertaking. I think the message will go out this afternoon to families across the country that the Senate of the United States—hopefully, in a bipartisan way—will give focus and attention to different ideas, recommendations and suggestions of Members of this body,

and hopefully from others, to try to see what we can do not only about the problems of the schools but the inner cities and other communities affected by guns, as well.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the distinguished chair.

First, I thank Senator LOTT and Senator DASCHLE for their commitment to try to work out a resolution, a LOTT-DASCHLE amendment on the Kosovo issue. I have been saying, as have many others, that we as U.S. Senators, individually and as a body, have a duty to be on record on this issue. Those who oppose our involvement, I believe, should be on record in that fashion as well as those who are in favor.

I think it is well-known by most observers of the U.S. Senate that the 1991 debate that took place in this Chamber on the Persian Gulf war resolution was one of the more enlightened and, frankly, sterling moments of this Senate. It was a very close vote, 53–47. I remember it very well. At that time, Senators on both sides of the aisle and both sides of this United States were heard. They were on record and the U.S. Senate was on record, as well.

I point out that immediately following that very close vote there was a unanimous vote in support of the men and women in the military who were conducting that conflict.

I thank Senator LOTT and Senator DASCHLE. I am pleased to work out the details of this resolution. I know it is a very, very contentious and difficult issue that we will be debating. I have heard allegations that some Senators don't wish to risk a vote on this issue. I don't believe that is the case. If it were the case, we have young men and women right now who are risking their lives. It is incumbent upon us as a body to act.

Second, I say to my friend from South Carolina, I am sorry that we have to go through the filling up of the tree and filing a cloture motion on this bill. I prefer the normal amending process.

I believe the pending legislation is the Y2K substitute. What is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is amendment No. 271, a second-degree amendment offered by the majority leader.

Mr. MCCAIN. Mr. President, if there is an amendment that is germane that the Senator from South Carolina or anyone else would like to bring up, I believe we could by unanimous consent vacate the final amendment of the majority leader so that we can debate and vote on that amendment.

The purpose of filling up the tree was, clearly, to prevent nongermane amendments from clogging up this process.

I say to my friend from South Carolina, I think we should debate amendments. We should move forward as quickly as possible and get this issue resolved as quickly as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I was compelled momentarily to object to the request of our distinguished leader that the amendments be germane. I think a word is in order to understand my objection.

What happens is, No. 1, we have tried our dead-level best to compromise and move this particular piece of legislation along. My Intel friends wrote us a letter to the effect that there were four demands. I contacted Mr. Grove by phone and told him that of the four, I could agree to the waiting time period, to the materiality and the specificity, but the joint and several went to the heart of tort law and trials and I could not agree to that.

My understanding is and I am willing to fill out the record on this, our Chamber of Commerce friend, Tom Donohue and NAM downtown, Victor Schwartz, have been working this thing for years. When we are asked about germane amendments, I think of the opportunity that I have in this perilous position, so to speak, with respect to the legislation.

Realizing that they are willing to amend the Constitution, article VII, taking away a trial by jury, and they are willing to amend article X of the rights of the States with respect to tort law, then I thought maybe at the moment it would be good to amend article II with respect to the bearing of arms.

Yes, Mr. President, I do have an amendment, and it is at the desk. It is very germane to our interest in real things. We are not really concerned at this minute, because the system is working. According to Business Week, according to the testimony, according to the evidence, according to the editorials, our tort system is working to protect doctors, small business folks and everyone else. What is not working in Colorado is this inordinate number of pistols and firearms in our society.

I came to the Senate as a strong-headed States righter and still try my best to follow that principle because I believe in it very, very strongly. However, I have had to yield with respect to that particular position when it came to the Saturday night specials. We had the FBI come with that. The States could not control that. We had the matter of assault weapons, and the States could not control that.

Then watching over the years, the States' response, instead of going in the direction of control, they actually are in the direction of running around with concealed weapons. All the States now are going in that direction. That is why the NRA, the National Rifle Association, was ready to meet in Denver last week. I figured we ought to bring this up for immediate discussion.

Rush to judgment? No; no. I have been there 33 years. I have watched this debate, I have listened, and I watched our society. It is not a rush to judgment. It is a judgment that I had a misgiving about over many years waiting on the States to respond.

I put at the desk the Chafee amendment relative to handgun control. I will be prepared later on, if we are allowed and we get into the debate, to bring that up, because I think it is very timely. It is not a rush to judgment. It is far more important to our society. According to Computerworld, according to the Oregonian, according to the New York Times, according to the witnesses, it is far more important than Y2K which may occur 7 or 8 months from now. Come; come.

We know good and well that everybody is getting ready. We have, in a bipartisan fashion, set aside the antitrust restrictions so that they could collaborate.

We have positive evidence of a young doctor in New Jersey who in 1996 bought a computer, and the salesman bragged how it can last for more than 10 years, that it was Y2K compliant. He gave references. By happenstance, they did go to one of the references and found out it was not Y2K compliant.

The young doctor then said: I need to get this thing modified and made compliant. The company that sold it to him said: Gladly, for $25,000. The main instrument itself was only $13,000.

What did he do? He wrote a letter and asked, and then he asked the second time. Months passed. He finally went to a lawyer. People do not like to go to lawyers and get involved in court. I hear all about frivolous lawsuits, frivolous, frivolous. Nobody has time for frivolous lawsuits. The real lawyer does not get paid unless he gets a result.

Finally, he did get a lawyer, and the lawyer was smart enough to put it on the Internet. The next thing you know, there were 17,000 doctors in a similar situation with the same company, and they finally reached a settlement and got it replaced and made compliant—free. That was all that was necessary.

The system is working now. There have been 44 cases. Over half of them have been thrown out as frivolous; half of the remaining cases have been settled. There are only eight or nine pending Y2K cases. The problem is real. You do not have to wait if you are going to have those supplies. It is like an automobile dealer faced every year with a new model and has to get rid of the old.

You will find some of the various entities will come around and offload and misrepresent. That is why we have the tort system at the State level, and that is why it works, and that is why we have this wonderful economic boom.

There is a conspiracy. They call it a bunch of associations that have endorsed the legislation. They have come around now and said this is a wonderful opportunity, we can just ask them for tort reform, and here it is going to save them from lawyers and frivolous lawsuits.

If I was an innocent doctor in regular practice with no time to study and pay attention to these matters, I would say, ''Sure, put me on, that sounds good to me. I am having troubles enough now with Medicare and HCFA and all of these rules and regulations made ex post facto about charges for my particular treatments.''

That is why it all builds and it mushrooms on the floor of the Senate. The Senator from South Carolina has been in the vineyards now 20 years on this one issue relative to trial lawyers and tort reform. He can see it like pornography. You understand it and know it when you see it, and I see this.

I was constrained on yesterday to not only put up the Chafee amendment relative to gun control, but more particularly, Mr. President, with respect to the violence in the schools. I know one of the causes. I have been fighting in that vineyard all during the nineties. We have had hearings on TV violence, and we have had study after study after study. They put us off again and again with another study. So in the Congress before last, we reported it out of committee 19 to 1 on barring gratuitous violence in these shows, excessive gratuitous violence.

When you run a Civil War series, necessarily you are going to have to have violent films and shots made and scenes that will appeal. But we got into the excessive gratuitous violence that they control in Europe, down in New Zealand and Australia. They use the one example, of course, in Scotland where they had the poor fellow who was estranged and insane come in and shoot up the little children. But they don't have this happening in Arkansas like it did or happening in Kentucky like it did.

You can see this occurring over the years. Monkey see, monkey do—youngsters emulate and they see more than anything else, not excessive gratuitous violence, but no cost, no result, no injury to the violence. Seemingly, it happens and you move right on. They become hardened. Then they go to the computer games shooting each other.

I called that bill up the Congress before last. We got it reported to the floor. I went to my friend, Senator Dole, who was running for President. He just returned from the west coast, and he had given the producers a fit. He said, ''You have to act more responsibly.''

I said, ''Bob, why don't I step aside and you offer the bill and let it just be the Dole-Hollings bill? It is out here and reported. You put up one. You are the leader, and we can get a vote on that right quick.''

We got a 19-to-1 vote in the committee. I never did get a response. So I put it in again, and in the last Congress it was reported out 20 to 1. But I cannot get the distinguished leader who wants to be oh so reasonable and everybody working together, and let's don't rush to judgment on TV violence—I have a judgment, and it is not a rush to it. It has been learned over the many, many years, looking at the experience of other countries, looking at the need in our society, having listened to the witnesses, the Attorney General saying this would pass constitutional muster with respect to the freedom of speech. I wanted to bring that up. That amendment sat at the desk. That is important, far more important than Y2K.

And otherwise we have hard experiences. We Senators do get home from time to time, and we do politic. And it was about 4 years ago when I got back to Richland County where I met my friend, the sheriff, Senator Leon Lott. And he said, I want to show you a school out here that was the most violent, was infested with drugs and trouble and everything else of that kind.

He said, Senator, I took one of your cops on the beat. I put him in the classroom, in uniform, teaching classes, law, respect for the law, the penalties in driving for young folks coming along, the penalties, and why the controls in relation to respect and the severe penalties relative to drugs, so they would understand.

Now, that was in the classroom. He was not in the parking lot waiting for somebody to steal a car. Rather, he was teaching respect for the law. And then, in the afternoon, this particular officer was associated with the athletic activities, and in the evening with the civic activities. He became a role model.

I say this advisedly because I think about that poor security officer who did not know from ''sic em'' out there in the Columbine school in Colorado. Here they could unload pipe bombs, all kinds of pistols, all kinds of this, that, and everything else, like that going on the Internet, running down the halls in trench coats, butt everybody out of the way, and everything else. They were surprised by what happened.

So, yes, I have an amendment at the desk relative to our safe schools safety initiative because Senator GREGG, the chairman of our Subcommittee on State, Justice and Commerce—we put $160 million in the appropriations bill last year, and it is being used and employed with tremendous success all over the country.

The emphasis should be not as I heard on TV last night, where they said this law enforcement officer would be directly connected with law enforcement; I want him connected with the students. I want him to become a role model. I want him to understand and know the students and know the teachers. And the teachers know when they have a troublemaker, or whatever it is—a poor lad maybe does not have a mama or does not have a daddy, he is totally lost, so he brings about all kinds of extreme activity to get recognition.

But that officer can work. And we also added in counseling. I cannot have him do all the counseling and all the role modeling and everything else at once, as well as law enforcement, as well as instruction. So we included, after the advice from hearings, that we put in counseling; and we got a measure. It is on the statute books. It ought to be embellished and enlarged.

These are the kinds of things we ought to be talking about this afternoon rather than this bum's rush about a crisis that is going to happen 7 months from now. Come on. Here it is happening right underneath us and all we do is pray. We are the board of directors of corporate United States of America, and we are flunking our particular duties; we cannot pay any bills.

We talked all last week—and it is still on the calendar right now, and regular order—of saving 100 percent of Social Security, a lockbox. Then I heard instead the distinguished leader say, oh, no. He said, this money we are going to add on to the President's request for Kosovo—another $6 billion. When asked, where is it going to come from, he said, from Social Security.

The truth of the matter is, they say that is the only surplus, but it is not. Social Security is $720 billion shy. And with the estimation—and I have it by the Congressional Budget Office—at the end of September this year we will owe—not surplus—Social Security $837 billion, because what we have been doing is we have been paying down the debt.

It is like taking two credit cards, having a Visa card and MasterCard, and saying, ''I'll pay off my MasterCard with the Visa card. It looks pretty good for the MasterCard debt—the public debt—but it increases the Visa debt over here—it increases the Social Security debt. So it has. And we owe Social Security $837 billion. The $137 billion in excess of what is required to be paid out this particular year is not surplus.

Under the law, 13301 of the Budget Act, it should go in reserve for Social Security for the baby boomers, but we are all talking about; oh, the President; oh, the Congress; no, the Congress; no, the President. Nobody wants to get a plan to save Social Security; and all the time we are stealing, we are looting the fund. It is a shame. It is a show. It is a spin. It is the message nonsense that you have up here in the Senate.

So let's get real now and let's get these issues out. Let's talk about handguns. Let's talk about Kosovo. Let's talk about TV violence. We have some real problems. Let's talk about paying the bill, and not any ''Mickey Mouse'' of one day it is going to be a lockbox and no one can get to it and 48 hours later saying, no, no, I'm going to use that lockbox for a $12 billion payment on Kosovo. We have to get honest with the American people.

I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Oregon.

Mr. WYDEN. I thank the Chair.

I have been here many fewer years than the Senator from South Carolina,

but I can tell you, just listening to him over the last few minutes, I sure agree with what he has to say about Social Security, I sure agree with what he has to say about school violence and the connections that are so important in the community between law enforcement, counselors, and the students. I could go on and on. I have supported him on many of those issues in the past and am planning to do so in the future.

But I did want to take the floor for just a moment and address a couple of the points that were made with respect to the Y2K issue specifically.

I am very hopeful that we can still see the Senate come together on a bipartisan basis to deal with this issue. The fact of the matter is that the year 2000 problem is essentially not even a design flaw. It is a problem because a number of years ago, to get more space on a disc and in memory, the precision of century indicators was abandoned. And it is hard for all of us today to believe that disc and memory space used to be at a premium, but it was back then, and that is why we have this problem today.

So what a number of us in the Senate want is to do everything we possibly can to ensure companies comply with the standards that are necessary to be fair in the marketplace, but also to provide a safety net if we see problems develop and particularly frivolous, nonmeritorious suits.

Now, with respect to a couple of the points that have been made on the record, this notion that the sponsors, particularly Senator MCCAIN and I, are trying to rewrite tort law for all time is simply not borne out by the language of this bill. This is a bill which is going to sunset in 2003. It is not a set of legal changes for all time. It is an effort to deal in a short period of time with what we think are potentially very serious problems.

In fact, the American Bar Association—this is not a group of people who are against lawyers, but the American Bar Association itself has said this could affect billions and billions of dollars in our economy. So this bill will last for a short period of time. It doesn't apply to personal injuries, whatever. If a person, for example, is injured as a result of an elevator falling because the computer system broke down and is tragically injured or killed, all of the legal remedies in tort law remain.

This is a bill that essentially involves contractual rights of businesses. We respect those rights first, and only when the marketplace breaks down would this law apply.

We have heard a number of comments in the last few hours that this legislation throws out the window the principle of joint and several liability, a legal doctrine that I, following the lead of the Senator from South Carolina, have supported in many instances, particularly when it relates to vulnerable individuals who might be the victim of personal injuries. But this legislation specifically says that joint and several liability will, in fact, apply if you have egregious or fraudulent conduct on the part of the defendant. And, second, it will apply if you have an insolvent defendant so there will be an opportunity for the plaintiff to be made whole. We also make changes relating to directors and officers to ensure that they have to be held accountable.

As to the evidentiary standard, the sponsors of this legislation have made it clear that they want to work with Senator HOLLINGS and others who have questions about this standard to change it. What we wish to do is make it comply with the earlier legislation we overwhelmingly passed on Y2K.

There have been a number of comments made today about the Intel Corporation and their views. I ask unanimous consent that a letter from the CEO of the Intel Corporation be printed in the RECORD.

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

INTEL CORPORATION,
Santa Clara, CA, April 19, 1999.

Re Y2000 legislation.

Hon. RON WYDEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR WYDEN: I write to ask for your help in enacting legislation designed to provide guidance to our state and federal courts in managing litigation that may arise out of the transition to Year 2000-compliant computer hardware and software systems. This week, the Senate is expected to vote upon a bipartisan substitute text for S. 96, the ''Y2K Act'', which we strongly support.

Parties who are economically damaged by a Year 2000 failure must have the ability to seek redress where traditional legal principles would provide a remedy for such injury. At the same time, it is vital that limited resources be devoted as much as possible to fixing the problems, not litigating. Our legal system must encourage parties to engage in cooperative remediation efforts before taking complaints to the courts, which could be overwhelmed by Year 2000 lawsuits.

The consensus text that has evolved from continuing, bipartisan discussions would substantially encourage cooperative action and discourage frivolous lawsuits. Included in its provisions are several key measures that are essential to ensure fair treatment of all parties under the law:

Procedural incentives—such as a requirement of notice and an opportunity to cure defects before suit is filed, and encouragement for engaging in alternative dispute resolution—that will lead parties to identify solutions before pursuing grievances in court;

A requirement that courts respect the provisions of contracts—particularly important in preserving agreements of the parties on such matters as warranty obligations and definition of recoverable damages;

Threshold pleading provisions requiring particularity as to the nature, amount, and factual basis for damages and materiality of defects, that will help constrain class action suits brought on behalf of parties that have suffered no significant injury;

Apportionment of liability according to fault, on principles approved by the Senate in two previous measures enacted in the area of securities reform.

This legislation—which will apply only to Y2K suits, and only for a limited period of time—will allow plaintiffs with real grievances to obtain relief under the law, while protecting the judicial system from a flood of suits that have no objective other than the obtainment of high-dollar settlements for speculative or de minimus injuries. Importantly, it does not apply to cases that arise out of personal injury.

At Intel, we are devoting considerable resources to Y2K remediation. Our efforts are focused not only on our internal systems, but also those of our suppliers, both domestic and foreign. Moreover, we have taken advantage of the important protections for disclosure of product information that Congress enacted last year to ensure that our customers are fully informed as to issues that may be present with legacy products. What is true for Intel is true for all companies: time and resources must be devoted as much as possible to fixing the Y2K problem and not pointing fingers of blame.

For these reasons, we urge you to vote in favor of responsible legislation that will protect legitimately aggrieved parties while providing a stable, uniform legal playing field within which these matters can be handled by state and federal courts with fairness and efficiency.

Sincerely,

CRAIG R. BARRETT,
CEO, Intel Corporation.

Mr. WYDEN. I thank the Chair.

The key sentence is, the Senate is expected to vote upon a bipartisan text for S. 96, the Y2K Act, which we will strongly support. There is no question about the position of the company on this legislation.

Finally, we have made nine major changes in this legislation since it passed the committee. I voted against it in the committee because I thought Senator HOLLINGS was absolutely right—that the legislation at that time was not fair to consumers and to plaintiffs. But as a result of the changes that were made, I believed it was appropriate to try to come up with an approach that was fair to consumers and to plaintiffs as well as the small companies involved.

There are other negotiations that are still going forward. Senator DODD, for example, who is the leader on our side on the Y2K issue, has a number of good and practical suggestions. Senator KERRY has some thoughtful ideas on this as well.

I am very hopeful that we can resolve the procedural quagmire on this issue and quickly get to a vote, up or down. Then as a result of the very useful discussion that we had between the majority leader, Mr. LOTT, and Senator KENNEDY and others, we can move on to the juvenile justice issue. Because I can assure you, as a result of what we saw in Springfield, OR, last year, we wish to have some positive contributions on that.

Senator GORDON SMITH and I have a bipartisan bill which has already passed the Senate once. I am hopeful we can deal with this Y2K issue expeditiously and then go on to the topic that millions of Americans, just as Senator HOLLINGS has said this afternoon, are talking about and want to see the Senate respond to.

Mr. President, I yield the floor.

Mr. SESSIONS. Mr. President, I am pleased to rise and make some comments about the Y2K legislation designed to make sure that we spend our time and effort fixing this problem and not suing one another.

I really believe in the legal system. I had served as a lawyer my entire adult life, until 2 years ago, when I joined this Senate. I served as attorney general of Alabama. I was in private practice 12 years as U.S. attorney for the southern district of Alabama. During that time, I was involved in a lot of important legal issues.

I respect the law. I believe in our Constitution and our legal system. I have been to China, and I have heard the people in China say that what they need most of all right now for a modern economy is a good legal system.

I have been to Russia. I have heard the people in Russia talk about their need for an honest, fair, and efficient legal system.

We have a great legal system. We certainly ought not, as the Senator from South Carolina suggests, have a rush to judgment. But the problems that have occurred over a period of years involving excess litigation are not new. It has been occurring for a number of years, and it calls on us to think objectively and fairly as to how we are going to handle disputes.

This piece of legislation involves, as the Senator from Oregon just noted, one problem, a Y2K computer problem. It will terminate itself when that problem is over. But most of all, it is a commonsense and reasonable way for us to get through this problem without damaging our economy.

Let me share this story. These numbers that I am about to give were produced during a hearing at the Judiciary Committee not too long ago. We had some inquiry about the litigation involving asbestos and people at shipyards, and so forth, who breathe asbestos and had their health adversely affected.

What we learned was that over 200,000 cases had been filed, many of them taking years to reach conclusion. Two hundred thousand more were pending, and it was expected that another 200,000 would be filed out of that tragic problem.

What we also found was, when we made inquiry, we asked how much of the money actually paid by those defendant corporations got to the victims of asbestos. I am a person who believes in the legal system. I respect it. I was shocked and embarrassed to find out that the expert testimony was that only 40 percent of the money paid out by the asbestos companies actually got to the people who needed it, who were sick because of it. The legal fees are 30 and 40 percent. Court fees and costs all added to it take up 60 percent.

This is not acceptable. It is not acceptable if we care about a problem and how to fix it. That figure did not count the court systems that were clogged and remain clogged to this day by hundreds, even thousands of asbestos lawsuits.

I say to the Senate, we are facing a crisis.

These are some of the comments at the recent ABA, American Bar Association, convention in Toronto last August. A panel of experts predicted that the legal costs associated with the Y2K would exceed that of asbestos, breast implants, tobacco, and Superfund litigation combined. By the way, with regard to these asbestos companies, even with regard to big companies, there are limits to how much they can pay. Every single asbestos company in America that is still in business is in bankruptcy. Every asbestos company still in business is in bankruptcy. These are tremendous costs.

What this American Bar Association study showed was that the cost of this litigation would exceed asbestos, breast implants, a huge amount of litigation, tobacco, and Superfund combined. They note that this is more than three times the total annual estimated cost of all civil litigation in the United States.

We have too much litigation now. Seminars on how to try a Y2K case—these are lawyers' seminars, trying to teach each other how to file them—are well underway. Approximately 500 law firms across the country have put together Y2K litigation teams to capitalize on the event. They can't wait. Also, several lawsuits have already been filed, making trial attorneys confident that a large number of businesses, big and small, will end up in court as both plaintiffs and defendants. They are going to be suing because something went wrong with their computer, and the people they sold the computer to, or are doing business with, are going to be suing them for problems arising from the computers. We are going to be spending more money on litigation than on fixing the problem. This report indicates this litigation problem ''would reduce investment and slow income growth for American workers. Indeed, innovation and economic growth would be stifled by the rapacity of strident litigators.''

Well, I would say it is not a matter of whether there is a problem. There have been estimates of $1 trillion in legal costs for this thing. I think we do have a problem.

What is needed? I think this legislation goes a long way in meeting what is needed. What is needed is to spend our time and effort fixing the problem promptly. If we have all of our computer companies spending time hiring $500-per-hour lawyers to defend them in court, draining their resources from which to actually fix the problem, that is not the right direction to go in, I submit. In addition to that, when you are in litigation, you are not as open and willing to discuss the problem honestly with somebody because you are afraid anything you say and do will be used against you in a lawsuit. Lawyers are always saying, ''Don't talk about it.''

What we really want is the computer companies to get in there with the businesses that are relying on the computers and try to fix the problem at the lowest possible cost.

Now, we had one witness who didn't favor this in the Judiciary Committee. The Judiciary Committee voted out a bill very similar to Senator MCCAIN's bill. I am pleased to support his bill, as well as the one in the Judiciary Committee. But this company that filed a lawsuit and received a substantial verdict was not in favor of the legislation, he said. I asked him how long it took to get his case over. He said 2 years. It took him 2 years to get the case to a conclusion.

Now, we are going to have hundreds of thousands of lawsuits in every county in America, every Federal court, clogged up with these kinds of cases, and it will take years to get to a conclusion, and that is not a healthy circumstance for America. I really mean that. That is not good for us, if we care about the American economy. So we need to do that. We need to get compensation to people who suffer losses promptly, with the least possible overhead, the least possible need to pay attorney fees, the least possible need to have expert witnesses and prolonged times to get to it. We need to get it promptly and effectively, and we need to make sure that people who have been fraudulent and irresponsible can be sued and can be taken to court and taken to trial. That will happen in this case.

Now, some have suggested that we are violating the Constitution if we do that. Well, that is not so. We believe in litigation and in being able to get redress in court. This law would provide for that. Historically, the U.S. Senate and the State legislatures, every day, set standards for lawsuits. They set the bases of liability. They say how long it takes before you can file a lawsuit. Sometimes the statute of limitations is 2 years, sometimes it is 1 year, sometimes it is 6 years. Legislatures set standards for litigation. That is what they do. We are a legislative body and we have a right and an obligation to consider what is best for America in the face of this unique crisis and to deal with it effectively.

Let me ask, if we don't have such a law as this, what will happen? Well, I submit that there will be thousands of lawsuits filed. You may file it in one court and maybe they don't have many cases; maybe you have an expeditious judge and you get to trial within a matter of 6 months. Maybe in another court, it takes 2 years because they have a backlog. But you get to trial within 6 months. And say two people in that court get to trial within 6 months. One of them goes to a jury and the jury says, wait a minute, computer companies can't be responsible for all this; we don't think they are liable. No verdict. Down the hall, where another trial is going on, they come forward with a verdict of $10 million, or whatever, for this lawsuit.

Lawsuits are wonderful things for redressing wrongs, but in mass difficulties like this, they tend to promote aberrational distributions of limited amounts of resources. So we have a limited amount of resources and, as far as possible, we ought to create a legal system that gets prompt payment, consistently evaluating the kind of people who ought to get it. In some States, you will be able to recover huge verdicts because the State law would be very favorable. In other States, it would not be.

Some have suggested that it would be a horrendous retreat to eliminate joint and several liability. That is, if six people are involved in producing and distributing this computer system—six different defendants—and one is 5 percent at fault, one of them is 60 percent at fault and the others are somewhere in between, and the ones most at fault are bankrupt, they want the one least at fault to pay it all if they have the money to do so.

Now, people argue about that. That is a major legal policy debate throughout America today. Many States limit joint and several liability. Others have it in its entirety, and many are in between. So for us to make a decision on that with regard to this unique problem of computer Y2K is certainly not irrational. It is important for us.

Now, I say to you that the more lawsuits are filed, the longer the delays will be in actually getting compensation to the people who need it. Literally, when you talk to people in your hometown and they are involved in litigation, ask them about major litigation and they will tell you it would be unusual, in most circumstances, to get a case disposed of and tried within 1 year. Sometimes it is 3, 4, and 5 years before they are brought to a conclusion.

So I say that a system that promotes prompt payment of damages and prompt resolution of the matter is good for everyone. Allocating funds to fix this problem is a difficult thing. But the way you do it through the lawsuit system is not good in a situation where we have a massive nationwide problem. It is not a good way to do it. We are, again, talking about extraordinary costs and the clogging of courts. So the focus is taken away from actually fixing the problem and more to assigning blame, trying to encourage a jury to render the largest possible verdict.

Now, some would say, why do you have to limit the amount of punitive damages? Well, three times the amount of damages under this bill—damages are limited to three times the actual damages incurred for punitive, or $250,000, whichever is greater. They say, why do you want to do that? As long as there is a possibility that a jury might render a verdict for $10 million, lawyers have an incentive not to settle and take that case to a jury.

I have talked to lawyers. I know how they think. They say, well, we can settle this case for $200,000. They have offered that. I don't think we are likely to get much more than that, but there is a chance that we can get $1 million or $2 million. I believe we have a couple of jurors there who are sympathetic with us, and I am inclined to say, let's roll the dice and see. We are not likely to get a whole lot less, but we can get 5 or 10 times as much. That is what I advise you, Mr. Client; let's go for it. So what happens is this possibility of unlimited verdicts makes it more and more difficult in a practical setting for cases to be settled.

You will have more realistic settlements if you have this kind of limitation on the top end of punitive damages.

This bill will encourage remediation. It actually encourages prompt negotiation, consolidation, and problem solving. That is the focus of it. That is why I favor it.

I would just say this. Mr. President, the Y2K problem is a unique problem. It has the potential of hurting our economy. One of the greatest assets this Nation has—I can't stress this too much—is the strength and viability of our computer industry. We are world leaders. There is not a State in this Nation that doesn't have some computer manufacturing going on, and certainly not a community in America that does not depend on the innovation and creativity of the computer industry. They benefit from that creativity.

As a matter of fact, I heard one expert say that his belief is, the reason our economy is so strong, the reason inflation is not going up, even though salaries of our workers are going up faster than inflation, is because computers have made our workers more productive and that they can afford to pay them more, because using the high-tech computers, that are really just now in America coming on line fully and effectively and wisely utilized by American business, is really helping us increase productivity.

This is a marvelous asset for us. Some years ago many of these companies focusing on innovation and creativity apparently did not fully focus on the problem that is going to happen at the year 2000.

I mentioned earlier in my remarks how every asbestos company in America is now in bankruptcy. Many of those had a lot more business than just bankruptcy. They made asbestos. They made a lot more things than just asbestos. Yet their whole company was pulled down by this.

If we don't get a handle on this, think about it. We have the capacity to severely damage, by placing in bankruptcy, the most innovative, creative, beneficial industry perhaps this Nation has today, the thing that is leading us into the 21st century. I think this is a matter of critical importance. It is quite appropriate for the Congress to legislate on it. It is clearly a matter of interstate commerce. These computers are produced in one State and sold in all 50 States.

I really believe it is a situation that is appropriate for the Congress to respond to. It is appropriate for us to bring some rationality to the damages that will be paid out by these companies, to limit the amount of money they spend on litigation, to make sure the money gets promptly to those who need it, and otherwise to allow them to continue as viable entities producing every year more, better, and more creative products that make us more competitive in the marketplace.

Mr. President, I don't have any Microsoft business in my State. But I know the Department of Justice sued them for antitrust. I think that is fine. We will just see how that chase comes out.

In a way, it is sort of odd. I remember saying at the time that most countries which have a strong industry in their nation that is exporting and selling all over the world and improving the lives of millions of people do not sue them; they support them. But in America we tend to sue them when they get big. This idea that you are big, you have a deep pocket, and we ought to sue, I think, is not a healthy thing at this time.

Again, I think, as the Senator from Oregon mentioned, this is a one-time piece of legislation. For those who are troubled about any changes in our tort system, I really think that is not a wise approach. We need to make some changes. We have always changed our legal system. When there is a problem, we ought not hesitate to improve it. But if you are, remember, this is just a one-time problem.

Looking at a report from the Progressive Policy Institute, they concluded with these remarks:

> Perhaps the most important big winner from liability limitation [that is, this bill] will be the United States economy and by extension U.S. consumers who will not have to indirectly bear up to $1 trillion in cost with a healthy share going to lawyers.

I like lawyers. I respect them. But they are not producers. They are not making computers. They are not fixing computers. What they are doing is filing lawsuits and taking big fees for it. And they will have at least a one-third contingent fee and usually maybe more than 40 percent.

> By promoting attempts to Y2K remediation and lowering the likelihood of litigation, the rules instituted by this legislation will benefit everyone, not just a few. In the last State of the Union address, President Clinton urged Congress to find solutions that would make the Y2K problem the last headache of the 20th century rather than the first crisis of the 21st.

I think that is a good policy. The President has recognized the need for that. It has had bipartisan support in our committee, bipartisan support in this Senate—Republicans and Democrats. But there do remain a few who, through any way possible, are really frustrated by this legislation and are attempting to undo it. In light of the crisis we are facing, the threat it poses to small businesses that need their systems fixed, and through our creative

and imaginative computer industry which leads the world, I believe we must act.

I very much appreciate the leadership of Senator JOHN MCCAIN. He is a true leader in every sense of the word. He is a man of courage; he understands technology. He has done a great job on it.

I also express my appreciation to Senator ORRIN HATCH and the Members of the Judiciary Committee who have likewise worked on this legislation.

There are two separate bills. But they are very similar, and in conclusion they are very similar.

Mr. President, I thank the Members of this body for their attention.

I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I listened to the debate on this bill, S. 96. It is an important bill. It is an important bill because it protects American business.

There are elements of this bill which I think are wise policy. I am certain that at the end of the debate, if the amendment process is a reasonable one, we will pass legislation along these lines protecting business.

Mr. HATCH. Mr. President, I rise to state unequivocally my strong support for a Y2K bill.

Let me begin by stating how important Y2K remediation is to consumers, business, and the economy. This problem is of particular interest in my State of Utah which has quickly become one of the Nation's leading high tech States.

Working together, Senator DIANNE FEINSTEIN and I have produced a bill—S. 461, the Year 2000 Fairness and Responsibility Act—that encourages Y2K problem-solving rather than a rush to the courthouse. It was not our goal to prevent any and all Y2K litigation. It was to simply make Y2K problem-solving a more attractive alternative to litigation. This benefits consumers, businesses, and the economy. The bill was voted out of the Judiciary Committee.

But, Senator MCCAIN's bill is the focus of the present debate. With some distinctions—this bill accomplishes the same ends as Senator FEINSTEIN's and my bill. Let me say that I support a strong bill. I do not care who gets the credit. This is of no importance to me. What is important is that the Nation needs Y2K legislation. I thus will support any mechanism that is able to pass Congress. Let me explain why.

The main problem that confronts us as legislators and policymakers in Washington is one of uniquely national scope. More specifically, what we face is the threat that an avalanche of Y2K-related lawsuits will be simultaneously filed on or about January 3, 2000, and that this unprecedented wave of litigation will overwhelm the computer industry's ability to correct the problem. Make no mistake about it, this super-litigation threat is real; and, if it substantially interferes with the computer industry's ongoing Y2K repair efforts, the consequences for America could be disastrous.

Most computer users were not looking into the future while, those who did, assumed that existing computer programs would be entirely replaced, not continuously modified, as actually happened. What this demonstrates is that the two-digit date was the industry standard for years and reflected sound business judgment. The two-digit date was not even considered a problem until we got to within a decade of the end of the century.

As the Legal Times recently pointed out, ''the conventional wisdom [in the computer business was] that most in the industry did not become fully aware of the Y2K problem until 1995 or later.'' The Legal Times cited a LEXIS search for year 2000 articles in Computerworld magazine that turned up only four pieces written between 1982 and 1994 but 786 pieces between 1995 and January 1999. Contrary to what the programmers of the 1950s assumed, their programs were not replaced; rather, new programmers built upon the old routines, tweaking and changing them but leaving the original two-digit date functions intact.

As the experts have told us, the logic bomb inherent in a computer interpreting the year ''00'' in a programming environment where the first two digits are assumed to be ''19'' will cause two kinds of problems. Many computers will either produce erroneous calculations—what is known as a soft crash—or to shut down completely—what is known as a hard crash.

What does all this mean for litigation? As the British magazine The Economist so aptly remarked, ''many lawyers have already spotted that they may lunch off the millennium bug for the rest of their days.'' Others have described this impending wave of litigation as a feeding frenzy. Some lawyers themselves see in Y2K the next great opportunity for class action litigation after asbestos, tobacco, and breast implants. There is no doubt that the issue of who should pay for all the damage that Y2K is likely to create will ultimately have to be sorted out, often in court.

But we face the more immediate problem of frivolous litigation that seeks recovery even where there is little or no actual harm done. In that regard, I am aware of at least 20 Y2K-related class actions that are currently pending in courts across the country, with the threat of hundreds more to come.

It is precisely these types of Y2K-related lawsuits that pose the greatest danger to industry's efforts to fix the problem. All of us are aware that the computer industry is feverishly working to correct—or remediate, in industry language—Y2K so as to minimize any disruptions that occur early next year.

What we also know is that every dollar that industry has to spend to defend against especially frivolous lawsuits is a dollar that will not get spent on fixing the problem and delivering solutions to technology consumers. Also, how industry spends its precious time and money between now and the end of the year—either litigating or mitigating—will largely determine how severe Y2K-related damage, disruption, and hardship will be.

To better understand the potential financial magnitude of the Y2K litigation problem, we should consider the estimate of Capers Jones, chairman of Software Productivity Research, a provider of software measurement, assessment and estimation products and services. Mr. Jones suggests that ''for every dollar not spent on repairing the Year 2000 problem, the anticipated costs of litigation and potential damages will probably amount to in excess of ten dollars.''

The Gartner Group estimates that worldwide remediation costs will range between $300 billion to $600 billion. Assuming Mr. Jones is only partially accurate in his prediction—the litigation costs to society will prove staggering. Even if we accept The Giga Information Group's more conservative estimate that litigation will cost just $2 to $3 for every dollar spent fixing Y2K problems, overall litigation costs may total $1 trillion.

Even then, according to Y2K legal expert Jeff Jinnett, ''this cost would greatly exceed the combined estimated legal costs associated with Superfund environmental litigation . . . U.S. tort litigation . . . and asbestos litigation.''

Perhaps the best illustration of the sheer dimension of the litigation monster that Y2K may create is Mr. Jinnett's suggestion that a $1 trillion estimate for Y2K-related litigation costs ''would exceed even the estimated total annual direct and indirect costs of—get this—all civil litigation in the United States,'' which he says is $300 billion per year.

These figures should give all of us some pause. At this level of cost, Y2K-related litigation may well overwhelm the capacity of the already crowded court system to deal with it.

Looking at a rash of lawsuits, we must ask ourselves, what kind of signals are we sending to computer companies currently engaged in or contemplating massive Y2K remediation? What I fear industry will conclude is that remediation is a losing proposition and that doing nothing is no worse an option for them than correcting the problem. This is exactly the wrong message we want to be sending to the computer industry at this critical time.

I believe Congress should give companies an incentive to fix Y2K problems right away, knowing that if they don't make a good-faith effort to do so, they will shortly face costly litigation. The natural economic incentive of industry is to satisfy their customers and, thus,

prosper in the competitive environment of the free market. This acts as a strong motivation for industry to fix a Y2K problem before any dispute becomes a legal one.

This will be true, however, only as long as businesses are given an opportunity to do so and are not forced, at the outset, to divert precious resources from the urgent tasks of the repair shop to the often unnecessary distractions of the court room. A business and legal environment which encourages problem-solving while preserving the eventual opportunity to litigate may best insure that consumers and other innocent users of Y2K defective products are protected.

There are not at least 117 bills pending in State legislatures. Each bill has differing theories of recovery, limitations on liability, and changes in judicial procedures, such as class actions. This creates a whole slew of new problems. They include forum shopping. States with greater pro-plaintiff laws will attract the bulk of lawsuits and class action lawsuits. A patchwork of statutory and case law will also result in uneven verdicts and a probable loss of industry productivity, as businesses are forced to defend or settle ever-increasing onerous and frivolous lawsuits. Small States most likely will set the liability standard for larger States. This tail wagging the dog scenario undoubtedly will distort our civil justice system.

Some States are attempting to make it more difficult for plaintiffs to recover. Proposals exist to provide qualified immunity while others completely bar punitive damages. These proposals go far beyond the approach taken in the Judiciary and Commerce Committees' bills of setting reasonable limits on punitive damages. Other States may spur the growth Y2K litigation by providing for recovery without any showing of fault. A variety of different and sometimes conflicting liability and damage rules create tremendous uncertainty for consumers and businesses. If we want to encourage responsible behavior and expeditious correction of a problem that is so nationally pervasive, we should impose a reasonable, uniform Federal solution that substantially restates tried and true principles of contract and tort law. If there is an example for the need for national uniformity in rules, this has to be it.

The most appropriate role we in Washington can play in this crisis is to craft and pass legislation that both provides an incentive for industry to continue its remediation efforts and that preserves industry's accountability for such real harm as it is legally responsible for causing.

This will involve a delicate balancing of two equally legitimate public interests: the individual interest in litigating meritorious Y2K-related claims and society's collective interest in remediating Y2K as quickly and efficiently as possible. We need to provide an incentive for technology providers and technology consumers to resolve their disputes out of court so that precious resources are not diverted from the repair shop to the court room.

Let's face it, the only way a bill will pass is if it has significant bipartisan support. I think Congress can pass a bipartisan bill that is both fair and effective. Whatever bill is voted upon by this Chamber, it should at a minimum contain the following provisions that:

Preserves the right to bring a cause of action;

Requires a ''problem-solving'' period before suits can go forward. This delay must be reasonable and if so will spur technology providers to spend resources in the repair room instead of diverting needed capital;

Provides that the liability of a defendant would be limited to some percentage of the company's fault in causing the harm. This will assure fairness and lessen the push to go after deep pockets;

Allows the parties to a dispute to request alternative dispute resolution, or ADR during the problem-solving period;

Limits onerous punitive damages;

Contains a duty to mitigate. Plaintiffs should not be able to recover for losses they could have prevented;

Contains a contract preservation provision. This preserves the parties' bargain and prevents States from retroactively instituting strict liability;

Codifies the economic loss doctrine. This preserves the restatement of torts rule that you cannot get economic loss for tort injuries;

Allows evidence of reasonable efforts in tort. This section is very important because it prevents States from retroactively imposing strict liability or negligence per se; and

Contains a class action provision. The class action provision must contain a section that common material defect must be demonstrated to certify claims. It should also contain a section that allows for removal of State class actions to Federal courts based on minimal diversity.

Let me end by emphasizing that the Y2K problem presents a special case. Because of the great dependence of our economy, indeed of our whole society, on computerization, Y2K will impact almost every American in the same way.

But the problem and its associated harms will occur only once, all at approximately the same time, and will affect virtually every aspect of the economy, society, and Government. What we must avoid is creating a litigious environment so severe that the computer industry's remediation efforts will slacken and retreat at the very moment when users and consumers need them to advance with all deliberate speed.

I recognize that if we are to enact worthwhile Y2K problem-solving legislation this year, we must all work together—Democrats and Republicans—in a cooperative manner which produces a fair and narrowly tailored bill. I think we can do this. We can produce a measure which has broad political support, can pass the Congress, and become law.

I appreciate the efforts of the distinguished Senator from Arizona and others to try and get this bill through and will do everything in our power to assist him and help him to do so.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, all I will say is that we had a couple of long meetings of negotiations on this issue. We have still not resolved a couple of outstanding problems. They are tough, very difficult. I am not sure we will be able to resolve them, but we will continue negotiating tonight and into tomorrow. It is my understanding that the majority leader will move back on the bill at noon tomorrow, and we will have the morning to continue those negotiations.

I hope we can reasonably sit down together and resolve these remaining problems. We have resolved almost all of them, but there are two or three very difficult issues remaining. All I can do is assure my colleagues, I will make every effort to get them resolved as quickly as possible.

JUVENILE GUN VIOLENCE PREVENTION ACT

Mr. DURBIN. Mr. President, there are many of us who believe that today's debate should have been focused on protection of another group, not the businesses of America but the children of America, because, try as we might to capture public attention about the necessity for Y2K legislation, American's attention is still riveted on Littleton, CO, and Columbine High School.

We have had meetings across my home State of Illinois, as my colleagues have had across their States, talking to leaders, schoolchildren, police, psychologists, virtually every group imaginable, about what happened in Littleton, CO.

Sadly, it is a repetition of events which have occurred too often in our recent history.

October 1, 1997, Pearl, MS, a 16-year-old boy killed his mother, went to high school, and shot nine students, two fatally.

December 1, 1997, West Paducah, KY, three students were killed, five were found wounded in the hallway of Heath High School by a 14-year-old.

March 24, 1998, Jonesboro, AR, 4 girls and a teacher shot to death, 10 people wounded, during a false fire alarm in middle school when two boys age 11 and 13 opened fire from the woods.

April 24, 1998, Edinboro, PA, a science teacher shot to death in front of students at an eighth-grade dance by a 14-year-old.

May 19, 1998, Fayetteville, TN, 3 days before graduation, an 18-year-old honor student, allegedly opened fire in a