United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, THURSDAY, APRIL 27, 1995 No. 69

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 1, 1995, at 12:30 p.m.

Senate

THURSDAY, APRIL 27, 1995

(Legislative day of Monday, April 24, 1995)

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

PRAYER

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

Let us pray:

Gracious Lord of all life, help us never to separate what You have joined together. All of life is sacred to You. Forgive our imposed dichotomy between the sacred and the secular. Every person, situation, and responsibility is sacred because everyone and everything belongs to You. Give us a renewed sense that all that we have and are is Your gift. So may we cherish the wonder of life You have entrusted to us and live with an attitude of gratitude. May this gratitude be the motive of our work today in this Senate. We want our work to be an expression of our worship of You. Therefore we make a renewed commitment to excellence in everything we do and say.

All this is rooted in the inseparable relationship between intimacy with You and the integrity of our leadership. You've shown us that authentic intimacy results when the real I meets the true You in an honest, open, unpretentious relationship. It's when we come to You as we are that You whisper in our souls, ''You are loved now!'' Then the consistent experience of Your unqualified love gives us the courage to be genuine, loyal, and faithful to You in our relationships with others and our responsibilities as leaders to whom You can entrust authority and power to govern this Nation.

Thank You for this time of quiet with You in which we can receive the peace of knowing that we are loved and forgiven, the healing of the hurts of harbored memories, the answers to problems that seem unsolvable, and the vision for our Nation that otherwise would be beyond our human understanding. We praise You that to know You is our greatest joy and to serve You is life's greatest delight. In the name of Him who is the way, the truth, and the life. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning at 10:30, following morning business, the Senate will resume consideration of H.R. 956, the product liability bill.

All Members should be aware that amendments are expected throughout the day. Therefore, Senators should be on notice that there will be rollcall votes during today's session which probably will go into the evening.

I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from Missouri is recognized.

ORDER OF PROCEDURE

Mr. ASHCROFT. Madam President, I ask unanimous consent that I be allowed to allocate 15 minutes of time from Senator THOMAS of Wyoming, with whom I agreed that I should spend the time in his stead this morning.

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

RESERVATION OF LEADER TIME

Mrs. HUTCHISON. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 10:30, with Senators permitted to speak therein for up to 5 minutes each.

The Senator from Missouri is recognized.

Mr. ASHCROFT. Thank you, Madam President.

THE RESPONSIBILITY OF CONGRESS

Mr. ASHCROFT. Madam President, the opportunities of this 104th Congress are substantial. They are substantial not only because every Congress has great opportunity, but they are substantial because we have a significant opportunity to change the direction in

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

Printed on recycled paper containing 100% post consumer waste

which the country has been going for at least the last three decades.

The elections of November 8 provided a new chemistry for the Congress and a new potential for a change in direction. It is a change in direction which the people of America sorely need and desperately want. It is a change brought about by the popular recognition that over the last three decades or so, the Government of the United States has not been advocating a set of values necessary for the success and survival of this society in the next generation.

The Government has been validating irresponsibility through the Congress' conduct and Congress' programs since at least the midsixties, if not before.

Most of us know that responsibility is the key to a successful survival for this society in this century and in the next. If we want to sink, we can continue on our current track. But if we want to swim and survive, we are going to have to change, and the opportunity of this Congress is to change the way that Washington does business.

Let me just suggest a few ways in which Government has been validating irresponsibility. For the past several decades, the modus operandi of this Congress has been to spend more than it receives.

This deficit problem which we have had year after year after year, which has been growing larger and larger and larger, has been a way that the Government has subtly, if not intentionally, been teaching irresponsibility. It is just that simple. When Government tells us what is legal and what is illegal, it begins teaching us, and when by its conduct it shows that it is not important to pay your debts, that you can simply pile up irresponsibly mountains of debt that the next generation will have to sustain, that is a way of teaching irresponsibility. It is a way of saying to this society that you do not have to be responsible. It displays before the entire Nation, before every man, woman, and child, a kind of conduct which is destined to failure over the long term, designed inevitably to fail and to sink.

Similarly, for the last 30 years or so, Congress has been passing laws and then exempting itself from them. I cannot imagine a less noble thing for leadership to do than to enact laws which it says apply to everyone else but do not apply to leaders. We know that real leadership is to carry the burden forward first, to catch the vision of the noble first, to do what is right first; not to send someone else into battle first, not to push others into good behavior while we lag behind and languish in behavior which is unacceptable.

The Congress has validated irresponsibility by saying the rest of the world has to have a level of responsibility and care but that we could exempt ourselves.

Of course, the Congress was similarly irresponsible when it tried to run everyone else's business and not run its own.

The unfunded mandates of the last three decades are another way that Government has validated irresponsibility in the culture. Congress said to the people of America that we are not going to be responsible and it is not important to be responsible because, rather than take care of our own business responsibly, we are going to try with mandates to tell State and local governments how to do their business. We will even try to tell business how to conduct their business, but we will not do our own business that way. We will exempt the Federal operations from many of the regulatory impacts to the society, and we will direct the spending of State and local governments in spite of the fact that their view of the circumstances and understanding of the challenges is far superior to our own.

This character of conduct by the Government over the last three decades has literally validated irresponsibility in the society, and it is no wonder that the news magazines of late have headlined things like shame, or the absence of shame, in society, the absence of responsibility, the absence of the internal guideposts to good behavior.

When the biggest, perhaps, teacher of all in America, the Government, has by its own behavior been teaching irresponsibility over the last three decades, we have really hurt this culture. We have validated irresponsibility, not, however, just in the way we conduct our own affairs. Government has been validating irresponsibility in the kind of programs it promulgates.

Look at the welfare system. We have not said to this society, on welfare, that you will have to be good, that you will have to be moving in the right direction in order to have our assistance. We have not said that you will have to stop illegitimacy or that you will have to start to work or that you will have to be industrious. No, we have not. We have just said that no matter how irresponsible you are, we will continue to write the check and to pay the bills.

Or in the criminal law area we have not really been a society of responsibility. We have been confused about who the victim was and who the criminal was. We have said that the guy pulling the trigger was really the victim, that society had not treated him well and he was probably excused for pulling the trigger. The person who took the bullet probably was encouraged to say: ''I should not have been walking in this neighborhood at this time. After all, I probably invited the crime or the assault.''

The truth of the matter is that is the height of irresponsibility. Our criminal law system, our programs, have not been oriented toward responsibility. They have validated irresponsibility. Our program for welfare has not been an encouragement for responsibility but has validated irresponsibility.

For three decades we have been looking at this validation of irresponsibility, and now we come to 1995, to the 104th Congress, and our chance is to change from a culture of irresponsibility to a culture which demands responsibility.

That is what the first 100 days were about, that is what the next 100 days are about. And that is why we need to move forward with an agenda for the American people to reinvest our society with governmental leadership that points toward responsibility.

Let me just suggest how fundamental those changes are. Instead of spending beyond our means, instead of spending without regard to who will pay, we are going to start producing balanced budgets; instead of validating the irresponsibility of not paying our debts, we are going to demand a culture of responsible behavior by paying for what we consume; instead of saying that there is a set of laws for the Congress and then a bigger and broader set of laws for the citizenry, we are going to say, no, we want to be responsible.

With the Congressional Accountability Act, the first thing we did was to pass laws that said we would live under the same laws under which the citizens of America live. That pushes us toward a culture of responsibility. Instead of telling other governmental entities and jurisdictions how to consume their resources and deploy them with unfunded mandates, we have said we will stop doing that; we will start acting responsibly.

The real challenge for us is to move from a culture of irresponsibility to a culture of responsibility and for Government to take the lead.

Look at what is happening in the welfare area, and this is why it desperately needs reform. Instead of saying to people, no matter how irresponsible you are, we will promote that and validate it and as a matter of fact we will fund it—instead of doing that, we are going to say, no, you have to behave in certain ways; you have to improve your performance; you have to work; you have to treat your children with dignity and give them a chance to break the cycle of dependency and poverty. That is responsibility, and we are moving in that direction.

I submit to you that in the area of the criminal law, we will have a move toward responsibility. We will deny the culture of irresponsibility, and we will demand the culture of responsibility. And that is what Government should do. It should set an example. It should teach with its conduct and with the programs that it promulgates. It should promote responsibility. And that is why the first 100 days were important, 100 days that began this session, and that is why the rest of this session is of monumental importance.

It is very important that we carry through on this change from validating irresponsibility, which is the past, to promoting responsibility and demanding accountability, which is the future.

So we must again visit the balanced budget question. We must move forward with a real balanced budget to respond to the demand of the people that we institute a culture, at least a governmental culture of responsibility that will set an example for this society. We must move forward on the reforms which are before us. We cannot stop now. We must continue to address the agenda of the American people.

This is the great opportunity of this Congress, that we change the way Washington does business. And by changing the way Washington does business, we signal to America that there is a new demand for accountability and responsibility in this society: We no longer spend money we do not have; we no longer fail to live under the laws which we pass; we no longer try to direct the activities of other governmental entities. No, our conduct will be responsible instead of irresponsible—pay our debts, live under the laws we pass. Yes, we will stop telling governments much better prepared to make decisions than we are how those decisions ought to be made. All of those things are included in the monumental changes sweeping through the Congress. But the sweeping through is not complete. Sweeping through is a process, and it is a process which we must continue, which we must extend, which we must, as a matter of fact, complete. We must have the discipline and the determination to carry through on these programs.

We are in the midst of a debate on the question of product liability. The question is whether companies will be held responsible for things they really had nothing to do with, whether rental car companies that had nothing but ownership of a car which was stolen or otherwise wrongfully taken will be held accountable for millions of dollars of damage done with the car.

We have a tremendous energy that is pent up, a momentum in the culture of irresponsibility, and it is not easy for us to stop the spending, to stop the conduct which has promoted and validated irresponsibility for the last several decades. It is something on which we have made a great start and from which we should not turn. It is a task which we must continue.

So as we review, looking back, the significant achievements of the first 100 days, let us never forsake the potentials of the next 100 days. I think we have reached a threshold, a tipping point. We have reached an opportunity to continue to institute as a regular means of operation this culture of responsibility in Government. Let us make sure that in these next 100 days we do not turn back; that we continue to move forward on the agenda of the American people.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 727 and S. 728 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

(The remarks of Mr. LOTT and Mr. BAUCUS pertaining to the introduction of S. 729 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). Under the previous order, the Senator from Arkansas is recognized to speak for up to 10 minutes.

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me.

AN IRRESPONSIBLE LETTER

Mr. PRYOR. When President Clinton recently issued a warning against intemperate speech, Mr. President, a lot of people took those remarks as an attack on radio talk show hosts. But I would like to point out that the talk show hosts by no means have a corner on that market, and that we should all focus our attention on the rhetoric that is used by certain public interest groups and ourselves alike when we try to raise money through the coffers of public interest groups for our political campaigns.

I would particularly, Mr. President, like to call your attention to a recent letter issued by the National Rifle Association under the signature of its executive vice president, Wayne LaPierre.

This 5-page poison-pen letter is a revolting example of hateful, incendiary, irresponsible speech. It seeks to whip the readers into a frenzy against the Federal Bureau of Alcohol, Tobacco and Firearms.

Mr. President, this letter is obscene. While the ostensible purpose of this letter is to raise money for the National Rifle Association, it may well have the unintended and unfortunate side effect of stoking the fires of militant groups across this country of whom our citizens now have cause to fear.

In his letter, Mr. LaPierre says that the Federal ban on semiautomatic weapons ''gives jack-booted Government thugs more power to take our constitutional rights away, break in our doors, seize our guns, destroy our property, and even injure or kill us.''

Mr. LaPierre further continues in his letter:

> In Clinton's administration, if you have a badge, you have the Government's go-ahead to harass, intimidate, even murder law-abiding citizens.
>
> Randy Weaver at Ruby Ridge . . . Waco and the Branch Davidians . . . Not too long ago, it was unthinkable for Federal agents wearing Nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.
>
> Not today, not with Clinton.

In another part of the letter, Mr. LaPierre warns that what he sees as the attack on the second amendment to the Constitution ''is only the first in a long campaign to destroy the freedoms at the core of American life.'' The letter continues:

> You can see it when jack-booted Government thugs, wearing black, armed to the teeth, break down a door, open fire with an automatic weapon, and kill or maim law-abiding citizens.

Mr. LaPierre calls for a ''major show of force'' by America's 80 million gun owners. Mr. LaPierre concludes:

> This, the battle we're fighting today, is a battle to retake the most precious, the most sacred ground on Earth. This is a battle for freedom.

Well, Mr. President, these are very stirring words indeed, and I am sure it has been quite a success for the national fundraising activities of the National Rifle Association. It has been a great fundraising tool.

I noticed yesterday that Mr. LaPierre told a reporter, and I quote, ''the last thing the NRA wants is a fight with the ATF.'' Mr. President, I would be hard pressed to conclude that, based upon the incendiary, obscene nature of this letter that Mr. LaPierre sent across our country.

Let me make it very clear that I am not today blaming the National Rifle Association for the explosion in Oklahoma City, but I am suggesting that I think that any reasonable person would conclude that the words Wayne LaPierre has been using, the images he has been conjuring up has played directly into the fears that exist in the types of groups that apparently are responsible for the bombing and other terrorist attacks.

In that regard, the paid lobbyists and the chief fundraiser for the National Rifle Association have been tossing kerosene onto the fire. The leaders of the National Rifle Association must realize that these words have consequences and rights are accompanied by responsibilities. A loose tongue, Mr. President, can be just as dangerous as an unholstered gun when either is employed by an irresponsible person.

The National Rifle Association takes great pride in touting its programs to train responsible gun owners. I hope that its leadership today will now realize the need to teach and practice itself the responsible use of free speech.

Before the folks at the National Rifle Association start accusing this Senator of trying to take away their first amendment rights, as well as their second amendment rights, let me make it very plain that I have no intention of taking action to forcibly muzzle any of them through any action by the Congress of the United States. I am not questioning the right of the NRA to say what it wishes in its fundraising letters. But I do believe, Mr. President, that Wayne LaPierre should be absolutely ashamed of what he has written in this letter to his members of the National Rifle Association.

Just because in our society one might have the right to do something or to say something does not mean that he should say it. Just because one has the protection of the first amendment in our Constitution is no reason

to abuse that protection or to abuse the first amendment.

Politicians and lobbyists, unfortunately, have relied much too heavily on the language of hyperbole to claim its share of the marketplace of ideas. This letter, written by the executive vice president of the National Rifle Association, is certainly not the only instance of hyperbole and the National Rifle Association is certainly far from its only practitioner.

Mr. President, I today am not attacking the members of the National Rifle Association, but I cannot believe—knowing many good members of that organization—I cannot believe that the National Rifle Association members support their organization, their leadership demonizing a Federal law enforcement official or an agency.

Mr. President, how much time do I have, I might ask?

The PRESIDING OFFICER. The Senator has 1 minute 20 seconds.

Mr. PRYOR. Mr. President, I can remember about 35 years ago when I was first elected to a position of State representative of Ouachita County. During my first term in office, I first heard of the National Rifle Association. I would like to tell you about it, if I might.

Over one weekend during that first term of my first session, a young child, 5 or 6 years of age, in a grocery store parking lot saw a gun rack in a truck in the next vehicle, got out of his parents' car while they were in the store, got into the truck, took the rifle from the gun rack and killed himself accidentally. The town became very upset, and they asked me to see if there was anything we could do about it.

I introduced the next week, at the behest of the Arkansas Game and Fish Commission, with the support of law enforcement officials throughout the State, a very simple proposal that said something like this: That no automobile—truck or car—in the incorporated city limits of any community in our State of Arkansas shall be able to carry a loaded shotgun or a rifle. Pretty simple. It passed 99–0 in the house of representatives.

It went to the State senate and, Mr. President, that is when I first heard of the National Rifle Association. All of a sudden, throughout America, there was a bulletin that Representative PRYOR is trying to take your guns away in the State of Arkansas, and if this happens, it is going to happen all across the country and we need to stop it now.

Needless to say, Mr. President, my bill did not become law. It died in the State senate of Arkansas. I remember still getting hundreds of telegrams and letters from all over our country protesting this legislation.

But there is one I especially recall, one specific letter I received during that battle. It was from a former college roommate I had from the University of Arkansas, and it went something like this: Dear DAVID, I never knew all that time that I was your friend and roommate at the university that you were a Communist.

Well, Mr. President, that is what we have today—the selling of fear. It is continuing and it must stop. I am hopeful, Mr. President, that the membership of the National Rifle Association will question some of the positions of its leadership in attempting to sell fear at this most incendiary time in our Nation's history.

Mr. President, I ask unanimous consent that the letter from Mr. LaPierre be printed in the RECORD.

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

NATIONAL RIFLE ASSOCIATION.

DEAR FELLOW AMERICANS: I've worn out a lot of shoe leather walking the halls of Congress. I've met key leaders, I've talked with old allies, I've met with the new Congressmen and many staff members.

What I'm hearing and seeing concerns me.

Many of our new Congressmen are ignoring America's 80 million gun owners. Some have forgotten what we did to elect them. Others say our demands to restore our Constitutional freedoms are ''politically out of line.''

Don't get me wrong, not all of them are like this. Senator Phil Gramm, House Speaker Newt Gingrich, and Congressman Bill McCollum, Bill Brewster and Harold Volkmer are all coming to our aid. But too many others are not.

And without a major show of force by America's 80 million gun owners, America will resume its long march down the road to gun bans, destruction of the Constitution and loss of every sacred freedom.

I want you to know I'm not looking for a fight.

But when you consider the facts of our current situation, you too, will see we have no other choice.

Fact No. 1: The Congress' leading anti-gunners, Senators Dianne Feinstein, Ted Kennedy and Congressmen Charles Schumer and Major Owens all survived their last elections.

They've pledged to fight us to the bitter end for Brady II and its ammo taxes, licensing and registration schemes, gun rationing, bureaucrats with the power to determine if you ''need'' a gun and yes, the repeal of the Second Amendment.

It doesn't matter to them that the Brady Law is a failure.

It doesn't matter to them that the Brady Law has become one more tool that government agents are using to deny the Constitutional rights of law abiding citizens.

It doesn't matter to them that the semi-auto ban gives jack-booted government thugs more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us.

Schumer, Feinstein, Kennedy, Owens and the rest of the anti-gunners want more and more gun control.

It can be something small and subtle like a regulation expanding the disqualification criteria for the Brady Law. They're fighting for anything that makes it harder for you to own a gun.

The gun banners simply don't like you. They don't trust you. They don't want you to own a gun. And they'll stop at nothing until they've forced you to turn over your guns to the government.

Fact No. 2: If the anti-gunners fail to achieve their goals in Congress, they have a fall-back position in Bill Clinton, the most anti-gun President in American history.

In two short years, Bill Clinton launched two successful attacks on the Constitution. He signed two gun control bills into law. He has sworn to veto any repeal of the semi-auto ban and any restoration of our Constitutional rights.

His Interior and Agriculture Departments have set their sights on closing hunting lands.

And his Environmental Protection Agency is attempting to take jurisdiction over existing uses of lead. This, of course, includes gun ranges and spent shot.

What's more, gun owners aren't the only ones Clinton's EPA has set its sights on. They're after fishermen, too. They want to BAN the use of small lead fishing sinkers and, of gravest concern, they want to stop the home casting of these sinkers.

If fishing sinkers are on the Clinton bureaucrat's list, you know what's next: lead shot, lead bullets, bullet casting and reloading.

Clinton's State Department is also adding to the attacks on gun owners and our Constitutional freedoms. In December, he signed the Summit of the Americas agreements which pledges that the U.S. Government will push for additional gun control.

Over in the Justice Department, Clinton's Attorney General Janet Reno has signaled her intent to ''squash'' the states' rights movement and deny states their Constitutional power.

And worst of all,

Fact No. 3: President Clinton's army of anti-gun government agents continues to intimidate and harass law-abiding citizens.

In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens.

Randy Weaver at Ruby Ridge . . . Waco and the Branch Davidians . . . Not too long ago, it was unthinkable for Federal agents wearing nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.

Not today, not with Clinton.

Our calls to investigate these outrageous assaults on our Constitutional freedoms are routinely silenced by the anti-gun media. But that's no surprise.

Fact No. 4: They've launched a new wave of brainwashing propaganda aimed at further destroying our Constitutional freedoms.

CBS, ABC, NBC, USA Today, Time, Newsweek and The New York Times have launched another round of phony polls and slanted stories to help the anti-gunners achieve their goals.

Their latest phony poll shows 70% of America support the ''semi-auto'' assault weapon ban.

That's simply not true. When it's explained that ''semi-autos'' are used in less than a fraction of one percent of crimes; that the ban only affects the law-abiding; and, that the ban is only one more way to deny Constitutional rights to the law-abiding, support for the ban drops to 30%.

But the media still uses this 70% statistic to trumpet the call for gun control.

What scares me the most about this 70% number is that the media has brainwashed 70% of Americans into believing that the government—and not each individual—is responsible for their personal protection.

Even worse, this 70% number means that there are enough people who can be brainwashed by the media to vote for a repeal of the Second Amendment if it were put to a vote.

The media, Clinton, the anti-gunners in Congress . . . this combination is a powder keg that could blow at any moment and it's set squarely underneath the Constitution.

And what this means is:

Fact No. 5: Congress must be forced to restore the Constitution, repeal the gun bans, investigate abuse by government agents and focus the public debate on criminal control, not gun control. . .

. . . Or what we're seeing now will only be a momentary patch of sunshine on the road to doom for the Second Amendment and our Constitution.

There is hope, though. Despite the current situation, I'm encouraged by you and your fellow NRA members.

Everywhere I go, to every gun show, every NRA–ILA grassroots operation, every Friends of NRA Dinner, even in cabs and airports around the country, I run into NRA members who understand the stakes and stand ready to fight.

The question I hear from almost every one of these NRA members is the same: ''*What can I do next*?''

If you're one of those members, I want to thank you for your courage, your conviction and your spirit. You keep me going. You keep me on the road. You give me strength to lead the battle.

And if you want to join me in taking the next step, I need you to do these two things today.

First, I need you to sign the enclosed Petitions to the United states Congress.

These petitions are addressed to the leaders of the U.S. Congress, Senator Robert Dole and Speaker Newt Gingrich, and your U.S. Senators Daniel Patrick Moynihan, Alfonse M. D'Amato and Congresswoman Sue Kelly.

Please be sure to sign all five petitions, then fold them and place them in the enclosed, postage-paid envelope addressed to me at NRA Headquarters.

These petitions spell out, in black and white, our agenda of repeal, reform, investigate and limit government power.

In the first amendment of the Bill of Rights, we are guaranteed the right to ''petition our Government for a redress of grievances.''

And that's exactly what we're going to do: redress our grievances in the biggest and most powerful display of political clout and commitment to the Constitution.

I want to personally deliver your five petitions, and the petitions of all 3.5 million of your fellow NRA members—17.5 million petitions in all—to Congress.

And I want to show the leadership in Congress, and your Senators and Congressmen from New York, that the number one priority in their Contract With America must be defending and restoring our Constitutional freedoms.

17.5 million Petitions to Congress is the largest ''redress of grievances'' since the Constitution and the Bill of Rights were written.

So I KNOW Congress will get the message. And I know they'll act on our agenda of Repeal, Reform and Investigate if only you and I speak out.

Your Petitions to Congress also sends another message—a message not spelled out on the Petitions themselves.

Each Congressman, on the average, will receive 8,000 Petitions from NRA members demanding action. 8,000 messages from angry voters sounds an alarm in every Congressman's head.

You see, most Congressional elections were won or lost by 5,000 votes or less. So, they'll realize that failing to defend the Second Amendment and failing to retake the Constitutional freedoms lost to the anti-gunners, could result in big losses at the next election!

That's why it's critical you take a few minutes to sign your Petitions to Congress and return them to me as soon as possible.

These petitions are our D-Day.

Armed with these petitions and our First Amendment rights, we are going to storm Congress, knock out anti-gunner strongholds and recapture every bit of ground we lost since Bill Clinton took office.

And if we're successful, these petitions will be the turning point in the history of the Constitution. . . . A day when our sacred right to keep and bear arms will be secure for the next generation of law-abiding Americans.

Second, when you return your signed Petitions to Congress, I need you to make a special contribution to the NRA of $15, $20, $25, $35, $50 or the most generous amount you can afford.

Most Americans don't realize that our freedoms are slowly slipping away.

They don't understand that politicians and bureaucrats are chipping away at the American way of life.

They're destroying business, destroying our economy, destroying property rights, destroying our moral foundation, destroying our schools, destroying our culture . . .

. . . Destroying our Constitution.

And the attack, either through legislation or regulation, on the Second Amendment is only the first in a long campaign to destroy the freedoms at the core of American life.

You can see it in the gun bans, certainly. But you can also see it in closed ranges, closed hunting lands, confiscated collectors' firearms, banned magazines and ammunition taxes.

You can see it when jack-booted government thugs, wearing black, armed to the teeth, break down a door, open fire with an automatic weapon, and kill or maim law-abiding citizens.

America's gun owners will only be the first to lose their freedoms.

If we lose the right to keep and bear arms, then the right to free speech, free practice of religion, and every other freedom in the Bill of Rights are sure to follow.

I am one American who is not going to sit on the sidelines and watch this happen.

And if you want to help me stop this destruction of the Constitution, then I hope you can make that special contribution of $15, $20, $35, $25 or $50 to the NRA today.

With your special contribution, I'll have the financial ammo I need to keep Congress focused on the mission we've assigned them.

First, with your help, I will expand our petition campaign to involve as many of America's 80 million gun owners as possible.

If we can double the number of Petitions flooding Congress, we'll double the speed Congress deals with our demands to Repeal, Reform and Investigate. And with double the show of clout, we'll wipe out anti-gunner opposition.

Second, with your special contribution, I can increase the NRA's public exposure on talk shows, at rallies and shows, in radio and T.V. advertising and through broadcasts like the NRA's Town Meeting that first sounded our alarm in 16 million households, last summer.

Part of our problem is that far too few Americans understand what's at stake in these battles.

My ultimate goal is to educate the American people that this issue is not just about guns, not just about hunting, not just about personal protection; this issue is about freedom—Your Freedom.

I want to use the power of T.V. and radio to show the American people that, if the NRA fails to restore our Second Amendment freedoms, the attacks will begin on freedom of religion, freedom of speech, freedom from unreasonable search and seizure. . . .

. . . And that unless we take action today, the long slide down the slippery slope will only continue until there's no freedom left in America at all.

I know you see it. The elbow room you have to hunt, shoot and live life the way you see fit is slowly disappearing.

And the truth is, NRA members have been hardened by legislative battles. And only NRA members have the courage, the conviction to draw the line in the sand.

That's why I'm hoping you can take a few moments to sign and date the enclosed Petitions and return them to me with your special contribution of $15, $20, $25, $35, $50 or more in the enclosed postage-paid envelope today. Or, you can charge by phone by calling 800–547–4NRA today.

You know, besides going shooting, I love to go to football games. And every time I go, I always hear my fellow fans talk about the impact of ''the 12th man.''

The 11 players calling the plays and doing the hitting get a lot of their motivation from the 12th man in the stands. I'm talking about the crowd who cheers wildly when our team is on the offense, and drowns out the signals of the opposing team when they're on the defense.

I need you to be that 12th man.

I need you to sign your Petitions to Congress and return them to me today. That simple act will give our allies the political courage to do what's right, to push ahead with our agenda of Repeal, Reform and Investigate.

Likewise, your signed Petitions to Congress will confuse and demoralize the anti-gun team and their agenda of bans, taxes, intimidation, harassment and destruction of the Constitution.

I know I've said what I'm about to say before. But this is a message that resonates with NRA members across the land. It's something I hope you, too, will say whenever you have the occasion to defend our Constitutional freedoms.

This, the battle we're fighting today, is a battle to retake the most precious, most sacred ground on earth. This is a battle for freedom.

Please tell me you're ready to take the next step by returning your signed Petitions to Congress and special gift to me in the enclosed postage-paid envelope today.

Thank you, I look forward to hearing from you soon.

Yours in Freedom,

WAYNE LAPIERRE,
Executive Vice President.

P.S.—As a special thank you for making a special contribution of $25 or more, I'd like to send you a copy of my national best-selling book, *Guns, Crime, and Freedom. Guns, Crime, and Freedom* is 263 pages of truth about guns, gun control, gun owners, the anti-gun media and what's happening to our freedoms.

I hope you'll read it and use it in your own personal campaign in New York to defend the Constitution. Use *Guns, Crime, and Freedom* to help you keep the pressure on Congress, write letters to the editor and teach other Americans about the battle we're fighting today. Thanks again for your support and friendship.

Mr. HARKIN. Mr. President, before I commence my remarks I want to congratulate Senator PRYOR on the very bold and very strong statement that he has made this morning. I think he is right on the mark. I say to Senator PRYOR that, like he, we have a lot of good, decent, hard-working, law abiding NRA members in the State of Iowa—there are hundreds—like I am. I know that they are as repulsed by Mr. LaPierre's letter as the Senator from

Arkansas. It is a shame when you have an organization with a lot of fine people in it that do abide by the law, that do want to instill in people a respect for guns and to teach them how to use them legitimately, responsibly, and to have an organization, then, taken over by the likes of Wayne LaPierre, and to really take what could otherwise be a decent organization which could instill in young people a healthy respect for firearms and hunting, and to move that organization, as he has done with this kind of letter, into almost an organization that would be disrespectful of our Constitution and disrespectful of the United States of America, I know he does not speak for the members of the NRA that live in Iowa.

Mr. PRYOR. If I might say, I appreciate the Senator's remarks.

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa [Mr. HARKIN] is recognized to speak for up to 10 minutes.

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

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

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

MEDICARE TICKING TIME BOMB

Mr. FRIST. Mr. President, yesterday I began discussions on the pending insolvency of Medicare, predicted to occur in the year 2002, just 7 years from today.

I called Medicare a ticking time bomb. I expressed my concern that this body has not addressed that ticking time bomb. We must act now to preserve Medicare, to protect it, to save it, to disarm that ticking time bomb.

I will continue those discussions this morning.

Congress and all Americans must realize that it is the Federal Government, through the Medicare program, that is the purchaser of health care for this country's seniors and people with disabilities. The same Government that brought you $100 hammers is also shopping for scalpels and stethoscopes. The Federal Government spends more money on health care than individuals, and more than employers. But, it's not our money. If it were, we would likely be more prudent consumers. We would likely react more quickly and more responsibly to skyrocketing costs.

So whose money do we spend? For the answer, we should revisit the creation of the program and remind ourselves of its intended role in our health care system when it was created in 1965. Also it is time to understand the shortfalls of the program.

Because the program was created to increase seniors' access to acute care, Congress mandated participation for hospital services, called Medicare part A. After seniors pay for a relatively low deductible—$716 in 1995, Medicare fully covers expenses for 60 hospital days. If a senior's hospitalization exceeds the 60 days in 1 year, he or she is responsible for a co-insurance fee—$179 per day for the 61st through 90th days, and $358 per day beyond that.

Medicare part A comprises 63 percent of all Medicare spending. It is funded by the Medicare portion of the Social Security payroll tax—a tax of 2.9 percent of all income—split evenly between employer and employee. Taxes collected from today's workers go directly to pay for services delivered to today's beneficiaries. It is important to understand that contributions to Medicare do not actually sit in the hospital insurance [HI] trust fund and wait for you. Rather, they are paid out immediately to meet the needs of today's seniors and people with disabilities. Beginning in 1997, the part A expenditures will exceed total income annually.

Medicare's part B goes to pay doctor bills and is voluntary. It is funded 30 percent from beneficiary premiums and 70 percent by automatic withdrawals from Treasury general revenues. Today, a senior opting for Medicare part B pays $46.10 each month and is responsible for a $100 annual deductible and 20 percent co-insurance for most services. General revenues provide a 70 to 75 percent premium subsidy and cover 80 percent of most services.

Theoretically, the funding arrangement for part A—the hospital insurance—would work fine if the demographics of the population were constant, if medical technology were constant, and if the growth of overall expenditures were constant. But, as we all know, this is not the case.

First—and most importantly—the elderly population is growing much faster than the overall population. In 1990, 2.1 million Americans qualified for Medicare. But in the year 2020, 3.9 million new enrollees will qualify—almost twice as many new enrollees will be qualifying that year. And who pays the bill? The working generation, which is not growing nearly as fast. When Medicare was created, two workers would cover the costs of the Medicare beneficiary. By the time I qualify for the program, it will take four workers to cover the same cost.

Consider the consequences of delaying Medicare reform. I have three sons: Bryan is 7 years old, Jonathan is 9, and Harrison is 11. In the year 2020, they will be 32, 34, and 36 years old. I will be 68 and eligible for Medicare benefits. My sons and their generation will pay for the services for my generation. It will take the taxes of all my three sons plus another individual just to pay for my own Medicare benefits. It is intolerable to punish our children, the next generation, with this inequity.

Second, medical breakthroughs are allowing people to live healthier and longer lives. Take my own field of heart disease as an example. Thirty years ago, there were few heart intensive care units in the country. Coronary artery bypass surgery had never been performed. Cardiovascular drugs were in their infancy. Heart transplants were but a dream for the future. Today, because of advances in medical science and technology, people who used to die of their heart disease are living 10, 20, or 30 years longer, and those new technologies are expensive.

Back to my earlier question, ''Whose money is this?'' Medicare is paid for by three vehicles: a 2.9 percent payroll tax, split by employers and employees; general revenue tax dollars; and beneficiary premiums, copayments, and deductibles.

I think it is safe to say that taxpaying workers are more watchful of the money coming out of their pockets than is the Federal Government. I know the employers are. We have recently seen their impact on the health care system as they have struggled with increasing costs. I have witnessed through my own parents that seniors are prudent purchasers of health care services. Since Medicare was not designed as a comprehensive insurance program, seniors already shop for additional health care coverage. Most seniors today live within a fixed budget. They are careful to judge the value of their health care dollar.

By failing to mend this program, we are failing all of these groups who will suffer from our inattention in the years to come. Yet, there is an ongoing premise that the Federal Government should not attempt to manage its spending of the Medicare dollar. Every other purchaser has to manage his or her money. Why should the Federal Government be exempt?

And, how does this country pay for our failure to manage the Medicare Program? First, employers pay in the form of higher health care costs. For the last 10 years, Congress has chosen to repeatedly cut payments to physicians and hospitals for services delivered. This reduces program costs incrementally, but does little to reduce the overall rate of growth of expenditures. Lower Medicare payments, especially when coupled with even lower Medicaid payments, simply lead providers to shift costs and to charge self-pay and privately insured patients more. This increases everyone's insurance premiums. In east Tennessee, a recent survey of physician fees found that the private sector is paying physicians, on average, 220 percent above Medicare rates. Depending on the specific procedure, these private plans are paying anywhere from 43 to 461 percent above Medicare rates. Without Medicare reform, private health insurance will continue to climb even further out of reach and all Americans will suffer reduced access and thus reduced overall quality.

Second, the working generation pays for our mismanagement of Medicare through increased taxes. Over the last

30 years, Congress has dramatically expanded both the tax base and the tax rate supporting the Medicare trust fund. Initially, Medicare relief on a 0.6-percent payroll tax on the first $6,600 earned. Today, the program relies on nearly a 3-percent payroll tax on all income earned. Next year for the first time in its history, the trust fund will begin spending more money than it is taking in. Without reform, a tax increase is around the corner. And at best, this tax increase would only prolong the program a few years.

Third, beneficiaries pay for Medicare's failures. Skyrocketing costs of the program force the same rate of growth on the direct expenditures by our seniors and disabled. Their out-of-pocket costs are directly related to overall program costs. Medicare does provide a generous subsidy, making it a better deal than anything else out there. But not all services are covered, the coinsurance and deductibles are substantial, and premiums are calculated to cover a defined amount of program costs. Only 1 out of 10 or 11 percent of seniors rely solely on Medicare for their health care insurance. Most seniors still purchase private supplemental medical coverage or have access to additional employer-sponsored coverage. Beneficiary costs will continue to climb as the overall program spending spins out of control.

Medicare is an entitlement. I do not suggest we take away that concept. However, I do ask us to remember what it entitles us to. Quite simply, the entitlement was intended to provide access to the private system. Our predecessors did not create a system which limited beneficiaries to public hospitals or Government-employed physicians. Rather, it provided financial access to private physicians and hospitals, the same providers Americans used before they turned 65.

If we viewed the Medicare subsidy today as it was originally intended—allowing beneficiaries to use it to access private coverage—seniors would then be able to choose health care plans that better meet their needs. Today they do not have that choice. We should provide that choice to our seniors.

Mr. President, I will continue this discussion over the next several days as we look forward to better ways to save, to preserve our Medicare Program.

I yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that I be permitted to speak for 15 minutes, and that a period for morning business be extended accordingly.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

LETTER FROM THE NATIONAL RIFLE ASSOCIATION

Mr. DODD. Mr. President, earlier today my colleague from Arkansas, Senator PRYOR, spoke about a very disturbing letter circulated by the National Rifle Association [NRA]. I commend him for his remarks. I do not want to get into a lengthy discussion of this issue, but I urge all of my colleagues, regardless of where you stand on the issue of gun control, to read this letter, which was sent out by the NRA under the signature of Mr. Wayne LaPierre, the executive vice president.

I do not know of anyone here, no matter how strongly they feel about the legitimate issue of what we do about gun control, that would not be offended by this letter and the language in it.

Again, I am not going to spend a great deal of time here this morning, but there is language in the letter which talks about:

> . . . jack-booted government thugs [given] more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us;

That is how the letter refers to our Government and the hard-working members of our Federal law-enforcement agencies. And the letter goes on, in reference to the Clinton administration:

> . . . if you have a badge, you have the Government's go ahead to harass, intimidate, even murder law-abiding citizens;

And there is even more:

> Waco and the Branch Davidians . . . Not too long ago it was unthinkable for Federal agents wearing Nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.

Law-abiding citizens? People who shot Federal agents, who burned their own buildings, and killed their own families and friends? I mean this is incredible.

And this is not a letter from some fringe organization. It is a letter from the NRA—a national organization that usually has credibility. Quite simply, the NRA ought to know better.

Please read this letter. It is five or six pages. And if you are not as offended as I have been by reading it, I will be surprised.

Someone needs to ask for a retraction of this letter. Put aside the tragic events in Oklahoma for a moment, I do not want to suggest that this letter is linked to that terrible tragedy. I do not want to cloud the issue. But someone needs to apologize for this letter. It goes way beyond the kind of rhetoric that is appropriate on these issues.

Remember this letter went, apparently, to millions of homes. I have no problem with people sending out fund-raising letters and even using strong language in those solicitations. But the NRA's letter goes way beyond the pale. At first, I was so shocked, I thought it might be a hoax. But apparently it was not. I understand the NRA has confirmed that it sent the letter.

Again, I urge my colleagues to read the letter and I ask unanimous consent that this letter be printed in the RECORD.

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

NATIONAL RIFLE ASSOCIATION.

DEAR FELLOW AMERICANS: I've worn out a lot of shoe leather walking the halls of Congress. I've met key leaders, I've talked with old allies, I've met with the new Congressmen and many staff members.

What I'm hearing and seeing concerns me.

Many of our new Congressmen are ignoring America's 80 million gun owners. Some have forgotten what we did to elect them. Others say our demands to restore our Constitutional freedoms are ''politically out of line.''

Don't get me wrong, not all of them are like this. Senator Phil Gramm, House Speaker Newt Gingrich, and Congressmen Bill McCollum, Bill Brewster and Harold Volkmer are all coming to our aid. But too many others are not.

And without a major show of force by America's 80 million gun owners, America will resume its long march down the road to gun bans, destruction of the Constitution and loss of every sacred freedom.

I want you to know I'm not looking for a fight.

But when you consider the facts of our current situation, you too, will see we have no other choice.

Fact No. 1: The Congress' leading anti-gunners, Senators Dianne Feinstein, Ted Kennedy and Congressmen Charles Schumer and Major Owens all survived their last elections.

They've pledged to fight us to the bitter end for Brady II and its ammo taxes, licensing and registration schemes, gun rationing, bureaucrats with the power to determine if you ''need'' a gun and yes, the repeal of the Second Amendment.

It doesn't matter to them that the Brady Law is a failure.

It doesn't matter to them that the Brady Law has become one more tool that government agents are using to deny the Constitutional rights of law abiding citizens.

It doesn't matter to them that the semi-auto ban gives jack-booted government thugs more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us.

Schumer, Feinstein, Kennedy, Owens and the rest of the anti-gunners want more and more gun control.

It can be something small and subtle like a regulation expanding the disqualification criteria for the Brady Law. They're fighting for anything that makes it harder for you to own a gun.

The gun banners simply don't like you. They don't trust you. They don't want you to own a gun. And they'll stop at nothing until they've forced you to turn over your guns to the government.

Fact No. 2: If the anti-gunners fail to achieve their goals in Congress, they have a fall-back position in Bill Clinton, the most anti-gun President in American history.

In two short years, Bill Clinton launched two successful attacks on the Constitution. He signed two gun control bills into law. He has sworn to veto any repeal of the semi-auto ban and any restoration of our Constitutional rights.

His Interior and Agriculture Departments have set their sights on closing hunting lands.

And his Environmental Protection Agency is attempting to take jurisdiction over existing uses of lead. This, of course, includes gun ranges and spent shot.

What's more, gun owners aren't the only ones Clinton's EPA has set its sights on.

They're after fishermen, too. They want to BAN the use of small lead fishing sinkers and, of gravest concern, they want to stop the home casting of these sinkers.

If fishing sinkers are on the Clinton bureaucrat's list, you know what's next: lead shot, lead bullets, bullet casting and reloading.

Clinton's State Department is also adding to the attacks on gun owners and our Constitutional freedoms. In December, he signed the Summit of the Americas agreements which pledges that the U.S. Government will push for additional gun control.

Over in the Justice Department, Clinton's Attorney General Janet Reno has signaled her intent to ''squash'' the states' rights movement and deny states their Constitutional power.

And worst of all,

Fact No. 3: President Clinton's army of anti-gun government agents continues to intimidate and harass law-abiding citizens.

In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens.

Randy Weaver at Ruby Ridge . . . Waco and the Branch Davidians. . . . Not too long ago, it was unthinkable for Federal agents wearing nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.

Not today, not with Clinton.

Our calls to investigate these outrageous assaults on our Constitutional freedoms are routinely silenced by the anti-gun media. But that's no surprise.

Fact No. 4: They've launched a new wave of brainwashing propaganda aimed at further destroying our Constitutional freedoms.

CBS, ABC, NBC, USA Today, Time, Newsweek and The New York Times have launched another round of phony polls and slanted stories to help the anti-gunners achieve their goals.

Their latest phony poll shows 70% of America support the ''semi-auto'' assault weapon ban.

That's simply not true. When it's explained that ''semi-autos'' are used in less than a fraction of one percent of crimes; that the ban only affects the law-abiding; and, that the ban is only one more way to deny Constitutional rights to the law-abiding, support for the ban drops to 30%.

But the media still uses this 70% statistic to trumpet the call for gun control.

What scares me the most about this 70% number is that the media has brainwashed 70% of Americans into believing that the government—and not each individual—is responsible for their personal protection.

Even worse, this 70% number means that there are enough people who can be brainwashed by the media to vote for a repeal of the Second Amendment if it were put to a vote.

The media, Clinton, the anti-gunners in Congress . . . this combination is a powder keg that could blow at any moment and it's set squarely underneath the Constitution.

And what this means is:

Fact No. 5: Congress must be forced to restore the Constitution, repeal the gun bans, investigate abuse by government agents and focus the public debate on criminal control, not gun control. . .

. . . Or what we're seeing now will only be a momentary patch of sunshine on the road to doom for the Second Amendment and our Constitution.

There is hope, though. Despite the current situation, I'm encouraged by you and your fellow NRA members.

Everywhere I go, to every gun show, every NRA–ILA grassroots operation, every Friends of NRA Dinner, even in cabs and airports around the country, I run into NRA members who understand the stakes and stand ready to fight.

The question I hear from almost every one of these NRA members is the same: ''*What can I do next*?''

If you're one of those members, I want to thank you for your courage, your conviction and your spirit. You keep me going. You keep me on the road. You give me strength to lead the battle.

And if you want to join me in taking the next step, I need you to do these two things today.

First, I need you to sign the enclosed Petitions to the United states Congress.

These petitions are addressed to the leaders of the U.S. Congress, Senator Robert Dole and Speaker Newt Gringrich, and your U.S. Senators Daniel Patrick Moynihan, Alfonse M. D'Amato and Congresswoman Sue Kelly.

Please be sure to sign all five petitions, then fold them and place them in the enclosed, postage-paid envelope addressed to me at NRA Headquarters.

These petitions spell out, in black and white, our agenda of repeal, reform, investigate and limit government power.

In the first amendment of the Bill of Rights, we are guaranteed the right to ''petition our Government for a redress of grievances.''

And that's exactly what we're going to do: redress our grievances in the biggest and most powerful display of political clout and commitment to the Constitution.

I want to personally deliver your five petitions, and the petitions of all 3.5 million of your fellow NRA members—17.5 million petitions in all—to Congress.

And I want to show the leadership in Congress, and your Senators and Congressmen from New York, that the number one priority in their Contract With America must be defending and restoring our Constitutional freedoms.

17.5 million Petitions to Congress is the largest ''redress of grievances'' since the Constitution and the Bill of Rights were written.

So I KNOW Congress will get the message. And I know they'll act on our agenda of Repeal, Reform and Investigate if only you and I speak out.

Your Petitions to Congress also sends another message—a message not spelled out on the Petitions themselves.

Each Congressman, on the average, will receive 8,000 Petitions from NRA members demanding action. 8,000 messages from angry voters sounds an alarm in every Congressman's head.

You see, most Congressional elections were won or lost by 5,000 votes or less. So, they'll realize that failing to defend the Second Amendment and failing to retake the Constitutional freedoms lost to the anti-gunners, could result in big losses at the next election!

That's why it's critical you take a few minutes to sign your Petitions to Congress and return them to me as soon as possible.

These petitions are our D-Day.

Armed with these petitions and our First Amendment rights, we are going to storm Congress, knock our anti-gunner strongholds and recapture every bit of ground we lost since Bill Clinton took office.

And if we're successful, these petitions will be the turning point in the history of the Constitution . . . . A day when our sacred right to keep and bear arms will be secure for the next generation of law-abiding Americans.

Second, when you return your signed Petitions to Congress, I need you to make a special contribution to the NRA of $15, $20, $25, $35, $50 or the most generous amount you can afford.

Most Americans don't realize that our freedoms are slowly slipping away.

They don't understand that politicians and bureaucrats are chipping away at the American way of life.

They're destroying business, destroying our economy, destroying property rights, destroying our moral foundation, destroying our schools, destroying our culture . . .

. . . Destroying our Constitution.

And the attack, either through legislation or regulation, on the Second Amendment is only the first in a long campaign to destroy the freedoms at the core of American life.

You can see it in the gun bans, certainly. But you can also see it in closed ranges, closed hunting lands, confiscated collectors' firearms, banned magazines and ammunition taxes.

You can see it when jack-booted government thugs, wearing black, armed to the teeth, break down a door, open fire with an automatic weapon, and kill or maim law-abiding citizens.

America's gun owners will only be the first to lose their freedoms.

If we lose the right to keep and bear arms, then the right to free speech, free practice of religion, and every other freedom in the Bill of Rights are sure to follow.

I am one American who is not going to sit on the sidelines and watch this happen.

And if you want to help me stop this destruction of the Constitution, then I hope you can make that special contribution of $15, $20, $25, $35 or $50 to the NRA today.

With your special contribution, I'll have the financial ammo I need to keep Congress focused on the mission we've assigned them.

First, with your help, I will expand our petition campaign to involve as many of America's 80 million gun owners as possible.

If we can double the number of Petitions flooding Congress, we'll double the speed Congress deals with our demands to Repeal, Reform and Investigate. And with double the show of clout, we'll wipe out anti-gunner opposition.

Second, with your special contribution, I can increase the NRA's public exposure on talk shows, at rallies and shows, in radio and T.V. advertising and through broadcasts like the NRA's Town Meeting that first sounded our alarm in 16 million households, last summer.

Part of our problem is that far too few Americans understand what's at stake in these battles.

My ultimate goal is to educate the American people that this issue is not just about guns, not just about hunting, not just about personal protection; this issue is about freedom—Your Freedom.

I want to use the power of T.V. and radio to show the American people that, if the NRA fails to restore our Second Amendment freedoms, the attacks will begin on freedom of religion, freedom of speech, freedom from unreasonable search and seizure. . . .

. . . And that unless we take action today, the long slide down the slippery slope will only continue until there's no freedom left in America at all.

I know you see it. The elbow room you have to hunt, shoot and live life the way you see fit is slowly disappearing.

And the truth is, NRA members have been hardened by legislative battles. And only NRA members have the courage, the conviction to draw the line in the sand.

That's why I'm hoping you can take a few moments to sign and date the enclosed Petitions and return them to me with your special contribution of $15, $20, $25, $35, $50 or more in the enclosed postage-paid envelope

today. Or, you can charge by phone by calling 800–547–4NRA today.

You know, besides going shooting, I love to go to football games. And every time I go, I always hear my fellow fans talk about the impact of ''the 12th man.''

The 11 players calling the plays and doing the hitting get a lot of their motivation from the 12th man in the stands. I'm talking about the crowd who cheers wildly when our team is on the offense, and drowns out the signals of the opposing team when they're on the defense.

I need you to be that 12th man.

I need you to sign your Petitions to Congress and return them to me today. That simple act will give our allies the political courage to do what's right, to push ahead with our agenda of Repeal, Reform and Investigate.

Likewise, your signed Petitions to Congress will confuse and demoralize the anti-gun team and their agenda of bans, taxes, intimidation, harassment and destruction of the Constitution.

I know I've said what I'm about to say before. But this is a message that resonates with NRA members across the land. It's something I hope you, too, will say whenever you have the occasion to defend our Constitutional freedoms.

This, the battle we're fighting today, is a battle to retake the most precious, most sacred ground on earth. This is a battle for freedom.

Please tell me you're ready to take the next step by returning your signed Petitions to Congress and special gift to me in the enclosed postage-paid envelope today.

Thank you, I look forward to hearing from you soon.

Yours in Freedom,

WAYNE LAPIERRE,
Executive Vice President.

P.S.—As a special thank you for making a special contribution of $25 or more, I'd like to send you a copy of my national best-selling book, *Guns, Crime, and Freedom. Guns, Crime, and Freedom* is 263 pages of truth about guns, gun control, gun owners, the anti-gun media and what's happening to our freedoms.

I hope you'll read it and use it in your own personal campaign in New York to defend the Constitution. Use *Guns, Crime, and Freedom* to help you keep the pressure on Congress, write letters to the editor and teach other Americans about the battle we're fighting today. Thanks again for your support and friendship.

Mr. DODD. I yield the floor.

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

TRIBUTE TO SENATOR JOHN STENNIS

Mr. INOUYE. Mr. President, Senator John Stennis will long be remembered as the ''conscience of the Senate'' for his personal religious convictions and his many years of work on the Senate code of ethics. I will always think of him as a friend, and as one of the most effective chairmen of the Defense Subcommittee of the Appropriations Committee. We shared many of the same beliefs in that the United States should always strive for the most effective Armed Forces in the world, and his leadership was always deserving of respect and admiration.

Despite physical ailments and the death of his beloved wife of 52 years, Senator Stennis remained committed to this body and to his countrymen. He could always be found in his offices, never leaving until the Senate had adjourned for the day. He never gave up when he believed that he was right.

We need men and women who will fight for what they believe, and we should look to John Stennis as an excellent example of the forthrightness and dedication necessary to be effective leaders today.

Since Senator Stennis retired from this body in 1989, the Senate has been denied his wisdom and his leadership. Our entire country mourns his loss.

KOREAN AGREED NUCLEAR FRAMEWORK

Mr. THOMAS. Mr. President, I find myself in the unfortunate position of once more coming to the floor to briefly discuss the lack of progress being made in the implementation of the United States-North Korea Agreed Nuclear Framework.

During the recent recess, talks in Berlin between us and the North Koreans broke down. The point of contention continues to be the DPRK's obstinate refusal to accept two light-water reactors of South Korea manufacture as called for in the agreement. Mr. President I—and, I am sure, our negotiators headed by Ambassador Galucci—have grown weary of the North's negotiating tactics. Last-minute brinkmanship has failed to work for them in the past; I am unsure why they think if they continue to pursue that course we will eventually relent.

Korean's have a saying about the futility of trying to influence someone too stubborn to listen: ''reading into an ox's ear.'' At the risk of reading into the ''Pyongyang ox's'' ear, let me say it one more time. As I have said before as the chairman of the Subcommittee on East Asian and Pacific Affairs, we should not accept any deviation from the agreed framework on the part of the DPRK. As called for in the agreement, North Korea must accept the two light-water reactors from South Korea. It must not refire its Yongbyon reactor. It must cease its attempts to produce fissile material. It must take steps toward initiating and maintaining a bilateral relationship with the South. The consequence for their failure to live up to the agreement is very straight-forward: a return to the Security Council and the imposition of tough sanctions.

Mr. President, this is their choice—in black and white. There is no subtlety, no innuendo, no hidden message. Our negotiators have done an admirable job in continuing to press the North Koreans; I urge them to stick to their guns.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that ''Reagan ran up the Federal debt'' or that ''Bush ran it up,'' bear in mind that the Founding Fathers, two centuries before the Reagan and Bush Presidencies, made it very clear that it is the constitutional duty of Congress to control Federal spending, which they have not for the past 50 years.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,876,206,792,345.50 as of the close of business Wednesday, April 26. This outrageous debt—which will be saddled on the backs of our children and grandchildren—averages out to $18,403.01 on a per capita basis.

THE GUN-FREE SCHOOLS ACT OF 1994 REMAINS IN PLACE

Mrs. FEINSTEIN. Mr. President, yesterday, the Supreme Court overturned the Gun Free Schools Zones Act, a 1990 law sponsored by Senator KOHL and others that made it a felony to bring a gun within 1,000 feet of a school. The case revolves around a San Antonio youth who was tried for bringing a .38 caliber to school, and the decision has ignited widespread debate because it reverses decades of Supreme Court precedent.

However, as a result of this controversy, it is extremely important to clarify the status of a separate, recently passed law, which has a similar name—the Gun-Free Schools Act of 1994—but remains firmly in place.

Parents, teachers, and school officials must know that gun possession on campus cannot be tolerated, that the Gun-Free Schools Act of 1994 remains in place, and that in order to receive Federal education funds every school district in the Nation must soon have in place and functioning a policy that assures that any youngster who brings a gun to school will be expelled for not less than 1 year.

The following points must be clearly understood:

First, the Gun-Free Schools Act of 1994 was not struck down by the Supreme Court yesterday.

Instead, the Court struck down a 1990 criminal law with a similar-sounding name—but a different legal status.

Second, the Gun-Free Schools Act of 1994 will not be swept away by the Court's decision.

By simply requiring schools to have a zero tolerance policy as a condition of receiving Federal education funds, the Gun-Free Schools Act does not rely on the commerce clause for its authority.

Third, the Gun-Free Schools Act remains in place, and zero tolerance policies are already showing positive results.

Many school districts such as New York, Los Angeles, and San Diego that have already implemented zero tolerance policies are seeing fewer guns brought to school, and as a result fewer student expulsions.

In San Diego, gun possession on campus was cut in half during 1993, the first year of that district's policy, and there have been only 5 gun possession cases during this year.

Under the Gun-Free Schools Act, States have until October 1995 to enact or revise their own zero tolerance policies for school districts, requiring that students caught with guns on campus be expelled for not less than a year.

Fourth, the Court's decision to revoke Federal law does not affect State laws outlawing gun possession on campus.

Forty States, including California, have their own criminal statutes making gun possession on or near a school a State crime.

California's statute, signed into law by Pete Wilson, makes possession of a gun within 1,000 feet of a school a felony crime.

The Gun-Free Schools Act of 1994, which I have strongly supported, was passed last year in response to the increasing gun violence on school grounds, and the failure of many schools to respond clearly and forcefully to the presence of guns on campus.

In 1993, a Los Angeles high school student was shot waiting in line for lunch, and two other California high school students were killed within a 1-month period.

Over 100,000 guns are brought to school each day, according to several recent surveys and national projections.

There have been 105 violent school-related deaths in just the last 2 years, according to the Centers for Disease Control—caused by guns, knives, and other weapons.

In a nationwide survey, the CDC also found that 1 in 12 students brought a gun to school in 1993—up from 1 in 24 just three years before.

However, in too many school districts students who bring guns to school are simply given a short suspension, counseling, or transferred to another school.

By requiring that offenders be expelled from the regular school program, the Gun-Free Schools Act mirrors policies in a growing number of State education codes and urban school district policies.

School violence—especially deadly violence—must be the Nation's top educational priority.

Sixty-five students and six school employees were shot and killed at U.S. schools during 1985–90, according to the Center To Prevent Hand Violence.

Without being safe in school, neither teachers nor students can be expected to focus on learning.

In conclusion, there must be no uncertainty about the status of the Gun-Free Schools Act of 1994. Gun possession on campus cannot be tolerated, the Gun-Free Schools Act of 1994 remains in place, and in order to receive Federal education funds every school district in the Nation must soon have in place and functioning a policy that assures that any youngster who brings a gun to school will be expelled for not less than 1 year.

TULLAR BROTHERS NAMED KENTUCKY'S SMALL BUSINESS PERSONS OF THE YEAR

Mr. FORD. Mr. President, I rise today to celebrate the accomplishments of two fellow Kentuckians who exemplify the American entrepreneurial spirit. William and Michael Tullar are brothers from Grand Rivers, KY, who are being honored in our Nation's Capitol on May 2, 1995, as Kentucky's Small Business Persons of the Year by the Small Business Administration.

The Tullars' Livingston County business, known as Patti's 1880s Settlement, began in 1977 as a six-room motel and expanded to include Hamburger Patti's Ice Cream Parlor which was named for the Tullars' mother.

Over the last few years, Tullar Enterprises, Inc., has grown into a family retreat which reflects the historical heritage of the region. Log cabins purchased throughout Kentucky and Tennessee were restored and are used for clothing boutiques, gift shops, and a clubhouse for the settlement's miniature golf attraction. In addition, the Tullars have created a country escape with landscaping that includes creeks and waterfalls.

The Tullars were selected for this honor on the basis of their staying power, growth in number of employees, increases in sales, current and past financial reports, their innovative ideas, and their contributions to community oriented projects. I am also pleased to note that they were the Small Business Administration's 1994 Kentucky Blue Chip Winners.

I applaud the Tullars' can-do attitude and their belief in running a first-rate business. These qualities have earned them distinction within Kentucky's small business community and I am proud to witness their recognition at the national level. My best to them on this auspicious occasion and my wishes for continued success.

TAKE OUR DAUGHTERS TO WORK DAY

Mrs. MURRAY. Mr. President, I rise today to encourage girls and young women throughout the Nation to aspire and work hard to make their dreams a reality. In honor of national Take Our Daughters to Work Day, I have with me today my own daughter, Sara.

When I was young, many women did not work outside the home. The women who did work were teachers, nurses, and waitresses. Life has changed a lot since then. Young women today have more options and greater opportunities than ever before. There are over 58 million working women in this country today. There are 3.8 million women working in jobs not traditionally held by women—occupations such as engineering, medicine, mechanics, construction trades, farming, forestry, and transportation. They are even Members of the U.S. Senate.

Although it is encouraging to reflect on the changes that have been made by women since my childhood, I believe that the job choices available to young women today are not merely a matter of luxury. The reality is that many of our young women ultimately will be responsible for the financial well-being of their families. Women's employment is often critical to keeping families above the poverty line. Children whose mothers work are less likely to be poor, whether they live with one parent or two.

The ability of young women to realize their goals of good paying, rewarding employment are hampered, however, by lack of involvement by parents toward their child's education. I was reading the Seattle Times last Sunday, and Erik Lacitis, a staff columnist for the Times, suggested that parents visit their child's school, a sort of Take Your Parent To School Day. Mr. Lacitis comments that,

> In talking to teachers over the years, what they tell me is that a number of you [meaning parents] are strangers to your kid's schools * * * have you ever spent time in their classrooms, say, volunteering to carry out a project with the kids?

He ends his editorial by saying that one of the best things that could happen to schools is the presence of parents in the classroom regularly.

I could not agree more. I wholeheartedly support the idea of taking a child to work. I believe it is important for young people to see what their parents, and role models, do for 8 hours or more a day. It is important for us to show them they can achieve the same thing, and even more. However, I also feel that we need to see and experience what our children are doing for 8 hours of their day. It would show our children that we care about what they are learning in school, and would emphasize the importance of education in achieving their long-range goals.

Mr. President, I feel that it is very important for me as a woman, as a mother, and a Member of the U.S. Congress to encourage girls and young women throughout the Nation to realize their potential.

I never dreamed that I would become an elected official, much less a U.S. Senator. Today, I have the opportunity to be a role model for my daughter Sara and for other women across the country. Young women need to understand that they don't have to give up one part of their lives for another. Women should not have to choose between careers and families. I work long hours for the citizens of my home

State of Washington as a U.S. Senator, but also dedicate a lot of energy, caring, and love as a parent to my son and daughter.

Today is an important day in America. Across this Nation, parents are taking their daughters and other young women to work. They are helping to broaden young women's horizons, to show them the range of options available to them in the future.

I hope this day is a day when young women everywhere recognize that if they work hard and believe in themselves, they can be whoever they want to be. I am a U.S. Senator today because I learned to face tough challenges with courage, to take risks, not to be afraid to try, and to always dream the impossible.

Finally, I would like daughters across this Nation to remember a lesson I was taught early on: When others say you can not make a difference, they are usually just afraid you will.

Thank you, Mr. President.

TRIBUTE TO DAVID JOLLY

Mr. BAUCUS. Mr. President, tomorrow, in Missoula, MT, a man who has done a great service for our Nation's national forests will be honored by his friends, family, and colleagues. David Jolly, the Regional Forester for the U.S. Forest Service's northern region, is retiring after almost 34 years of public service.

Dave's career in the forestry and natural resources field has been long and distinguished. His work has taken him around the country where he has lived in eight States and in Washington, DC. Dave was born in Knoxville, TN. He grew up in a small town called Norris, TN, where his father worked as an economist for the Tennessee Valley Authority's Forestry Department headquarters. In this environment, Dave developed a great passion for forestry as a young boy. He completed a pre-forestry program at the University of Tennessee then went on to receive a degree from North Carolina State in forestry in 1961. During his college years, Dave served his country in the U.S. Naval Reserve.

Dave began his forestry career in the summer of 1961 working as a research aid for the Weyerhauser Co. in Centralia, WA. Later that same year, he got his first job with the U.S. Forest Service as a forester on the Francis Marion National Forest in South Carolina. From there, his career took off as he went on to become district ranger on the Ouachita National Forest in Arkansas, then deputy forest supervisor on the Ozark and St. Francis National Forests in Arkansas.

In 1972, he furthered his education in public policy at the University of Washington, then went on to work in the Forest Service's southern regional office in Atlanta. In 1976, he became forest supervisor of the Shawnee National Forest in Illinois. In 1982, he became deputy director of the Forest Service's Timber Management Program in Washington, DC. From there his career continued to flourish as he became deputy regional forester, then regional forester, of the agency's southwestern region overseeing the National Forests in Arizona and New Mexico. In 1992, I am proud to say, he came to Montana to oversee the northern region. This was no easy task managing such a vast region of forests and rangeland in Montana and Idaho but Dave did an exemplary job.

I personally came to gain a deep respect for Dave when the Department of Agriculture last year announced its intention to close region 1. Dave played no part in this misguided decision. And, personally, I suspect he shares my view that region 1 should remain open.

Yet Dave is a professional. He has never let his personal views be known. But he has done a first-rate job of communicating with me, region 1's employees, and the people of Montana. He has heard our concerns. He has provided the best information possible. In short, Dave Jolly is a class act.

I understand that Dave and his wife Peggy share a love of Montana and the great outdoors. I am pleased to hear that they plan to stay in Montana for awhile. Dave plans to do a lot of fishing in his retirement—what better place than Montana? I am sure than in between fishing trips, Dave will maintain his lifelong interest in forestry. He is a member of the Society of American Foresters, Rotary International, and the Society for Range Management. I wish Dave and his family much happiness in the coming years.

CRIME VICTIMS' RIGHTS

Mr. LEAHY. Mr. President, this week is Crime Victims' Rights Week. It was so designated by the President long before the devastating events in Oklahoma City last Wednesday. Our hearts go out to the families and victims of that terrible criminal act.

I know that the Attorney General and entire Federal, State, local, and international law enforcement community are dedicated to bringing those responsible for this heinous act to justice.

I rise today to commend those who are working so hard on behalf of all crime victims in crime victims' assistance and compensation programs.

Over the last 15 years we have made strides in recognizing crime victims' rights and providing much needed assistance. I am proud to have played a role in passage of the Victims and Witness Protection Act of 1982, the Victims of Crime Act of 1984, and the Victims' Rights and Restitution Act of 1990 and the other improvements we have been able to make.

Indeed, only last year, in the Violent Crime Control Act of 1994, Congress acted to make tens of millions of dollars available to crime victims. No amount of money can make up for the harm and trauma of being the victim of a crime, but we should do all that we can to see that victims are assisted, compensated, and treated with dignity by the criminal justice system.

With this in mind, I was shocked to find that the House-passed legislation that would devastate funding for crime victims' assistance programs and funding for child advocacy centers in the so-called Personal Responsibility Act, H.R. 4. Among the most important advances achieved over the last few years has been our attention to crime victims. We need to do more, not less.

The House bill would have the effect of reversing recent progress by prohibiting the use of the crime victims fund for victims' assistance. That is the effect of section 371(b)(2) of the House-passed bill. Buried in the fine print in a section entitled ''other repealers'' is the end of the Federal Crime Victims' Assistance Program. That is wrong and I strenuously oppose such efforts.

We in the Senate should use this week, Crime Victims' Rights Week, to declare our opposition to the House's short-sighted legislation. No one should need a reminder of how important our crime victims' assistance programs are.

For those who do, there is the recent, tragic examples of the bombing of the Oklahoma City Federal building and the gut-wrenching events that occur all too often in all too many of our urban and rural jurisdictions throughout the country.

Recognizing appropriate rights of crime victims is essential to securing dignity and a proper place in the criminal justice process for crime victims and their families. Last year, the Violent Crime Control Act included provisions to ensure a right of allocation for victims of crimes of violence or sexual abuse. This is the right to be heard at sentencing, the opportunity for the crime victim to speak to the court either directly or through a family member or legal representative. I fully support that addition to Federal law.

Indeed, I plan to introduce a bill that would extend that right to all Federal crimes.

TRIBUTE TO THE VICTIMS OF OKLAHOMA CITY BOMBING

Mrs. FEINSTEIN. Mr. President, much has been said and written in the last 8 days since the bombing in Oklahoma City. And we have all been shocked and angered by the panoply of images dominating our television screens and newspapers.

One hundred and ten dead have so far been recovered from the rubble, and there is fear that many more lie beneath slabs of cement and twisted girders.

So many of those killed or injured were public sector employees, and I believe we should take a moment to consider their sacrifice.

All too often, its easy to abuse those who work in Government jobs. They are called bureaucrats and accused of

wasting time around water coolers or with their feet up on their desk.

But the blast offers another image—as survivors huddled on the sidewalk waiting amid the smoke and debris, as investigators swarmed to the site and rescue workers began probing through the chasm that had been the Alfred T. Murrah Federal Building.

In the faces of that day we see Federal employees devoted to their jobs. We see them as people who deserve great respect. They were already hard at work that Wednesday morning when the bomb exploded at 9:04 a.m. They were serving the public in 1 of 15 Federal agencies, including Social Security, Secret Service, Veterans Affairs, Customs, the Drug Enforcement Agency, housed in that Federal building.

Among those who gave their lives was a Secret Service agent who worked for five Presidents and a Department of Defense special agent who happened to stop by the Federal building shortly before 9 a.m.

In fact, at the Oklahoma Office of Housing and Urban Development, 35 out of 100 employees in the office at the time of the blast are either dead or missing and believed dead.

Of course, Federal employees were not the only casualties.

There was the 37-year-old nurse who ran into the building after the explosion to save lives only to lose hers.

There were those in the Social Security office to enroll a 3-month-old, and, then there were the children in the day care center. Who shall ever forget the picture of the infant in the firefighter's arms?

The men and women who worked in the Murrah Building did not take their jobs for the money, for these were not high-paying jobs. They did not take these positions because they were glamorous, for these positions often meant simply trying to solve everyday problems of ordinary Americans.

I submit to you that the unsung heroes of the public sector—the many workers who perished in this terrorist attack—were doing their best to serve the public.

It is their memory I honor today.

AMONG THE DEAD

At least six agents from the Secret Service agency, located on the ninth floor of the Federal building:

Donald Leonard had helped protect seven Presidents in his 25-year career. Before joining the service, he was an Army military police officer and worked for the Treasury Department.

Agent Alan Whicher, 40, had protected President Clinton and just 2 months ago had taken a promotion to assistant special agent in charge of the Oklahoma City office.

Agent Cindy Campbell Brown had married a fellow agent 40 days earlier. Her new husband was still working in the Phoenix, AZ office. They were waiting for transfers so they could work in the same office.

Agent Mickey Maroney worked his entire career for the agency and that morning he had swapped shifts.

The Social Security Administration, located on the first floor allowing for easy access for constituents, was another agency with severe casualties:

Sharon Louise Wood-Chesnut, 47.

Julie Welch, 23, worked with Spanish-speaking customers at the Social Security Administration. She was engaged to marry an Air Force lieutenant who was assigned to Tinker Air Force Base, east of Oklahoma City.

Ethel Griffin, 55, was a service representative for the Social Security Administration. She was an avid craftswoman and loved her hobby. She is survived by her husband, Bruce, two sons, and three grandchildren.

Other agencies, too, lost valuable workers:

Drug Enforcement Agency office assistant Carrol J. ''Chip'' Fields worked on the ninth floor of the building. She is survived by her husband and a 21-year-old son.

Highway safety inspector Michael Carrillo, 44, had just returned to Oklahoma to raise his three children. He was a veteran of the Vietnam war.

Department of Housing and Urban Development's five attorneys, many supervisors and support staff.

Army Recruiter Sgt. Lola Rene Bolden. Her two children, ages 13 and 11, will now go to Alabama to live with their grandmother.

Marine Corps recruiter Sgt. Benjamin Davis, 29, was at the recruiting station when the bomb exploded. He is survived by his wife and one daughter.

Building inspector Steven Curry, 40, who worked for the General Services Administration. He leaves behind his wife and two teen-age children.

Department of Defense special agent, Larry Turner, was heading out of town on assignment. He stopped by the Oklahoma City office shortly before 9 a.m. He, too, was among those killed.

Federal Credit Union loan officer Robbin Huff, who was expecting her first child in June, was killed.

Other credit union employees who died included: 32-year-old Christi Jenkins and 23-year-old Frankie Merrell.

Many other Government workers who survived saw their lives shattered:

Edye Smith works as a secretary at the IRS office located just five blocks away from the Federal building. That morning, she took her two sons—3-year-old Chase and 2-year-old Colton—to the child care center located on the first floor of the Federal building. Her 2-year-old ran up to her as they said goodbye and said: ''I love you, Mommy.'' It was the last time Edye ever could see her children. Edye's brother, police officer Daniel Cross, found the two young boys. Both had been killed.

Twenty-year-old Aren Almon had just taken a new job at an insurance company. On April 18, her daughter, Baylee, had her first birthday. The next morning, at 7:45 a.m., Aren took her daughter to the child care center. Her daughter was the child wearing yellow booties who was carried out by a young firefighter shortly after the bomb exploded. The photo of the young victim and the firefighter, Chris Fields, appeared on newspapers all across the country and—without words—conveyed the horror of this attack.

Still, too, innocent taxpayers looking to the Federal Government for help also saw their lives taken away:

Mike and Kathleen Turner left their 4-year-old daughter, Ashley, with Mike's parents that Wednesday morning. At first, when news of the explosion was reported, neither parent worried since their daughter was safely tucked under the care of doting grandparents. Mike's parents, however, had made a morning appointment at the Social Security office. They, of course, would have made sure to take Ashley with them. Ashley's name appeared on the list of those killed by the bomb. Ashley's grandparents appear to have died as well.

Thirty-six-year-old Pamela Argo worked hard—during the day as a hospital administrator and moonlighting as a caterer. Seven weeks before, her husband died. On Wednesday morning, she had gone to apply for SSI benefits. She, too, died.

Cheryl Hammon accompanied her daughters, Felicia and Dana, to the Federal building to get a Social Security card for Dana's 3-month-old son Gabreon. Cheryl, Gabreon, and Dana's daughter, Peachlyn, were presumed dead. Dana survived after having her lower right leg amputated.

Joe Mitchell was about to turn 65, so he and his wife of 30 years, Leigh, headed down to the Social Security office in Oklahoma City. Shortly after 9 a.m., a Federal worker took Joe to a back office in the Social Security office to fill out some paperwork. His wife stayed in the lobby. The building was then rocked by the explosion. Joe survived. There has been no sign of his wife since then.

The list, of course, goes on and on. For many, there is no final word about a colleague or loved one as the gruesome work continues in Oklahoma City.

One survivor who worked at the HUD office in Oklahoma who has already spoken at the funeral of colleague, Susan Ferrell, recently remarked:

> [Susan] was one of our attorneys, a beautiful blonde who twisted her hair when she talked to you; who was so full of energy; who fed the birds with sacks of seed; who named the stray cats; who planted a million plants.
>
> That's what makes us so mad. We're not faceless bureaucrats. We're people like you and me, with kids and families.

As mayor and now as Senator, I have seen the hard work of public workers—paving our streets, serving in hospitals, fighting fires, patrolling our neighborhoods, assuring Social Security checks arrive on time, serving in our armed services, assisting our veterans.

It's fitting that we pay tribute to the dedication of those who were busily working in the public's interest at the moment of that terrible blast.

TRAGEDY IN OKLAHOMA CITY

Mr. SIMPSON. Mr. President, I rise to speak briefly about the recent tragedy in Oklahoma.

Mr. President, throughout our land, so many have already spoken out so eloquently about this, that I can add but little to what has already been said. The suffering of the victims, the inhumanity and cowardice of the bombers, the compassion and heroism of our community of citizens, and our solemn resolution to exact justice and punishment—all of these have been powerfully attested to already.

I will therefore limit myself to praise a particular aspect of our President's handling of this crisis.

There has been so much of our American democracy which has shown itself to be worthy of praise and of pride in this last week—from the behavior of ordinary citizens in a time of trial, on up through the labors of rescue and medical teams, through to the highest ranks of our law enforcement agencies, and up to the conduct of the President. I trust that terrorists the world over would be rightly awed and cowed by the great skill, energy, and resolution that has been displayed.

In the wake of such a horrible tragedy, there is a terrible feeling of powerlessness, and it exists for all of us, even those of us at the highest levels of government. We had to hope that the perpetrators would be caught. Many had to wait and to hope that loved ones would be found alive. Even those who were actively engaged in bringing relief and justice had to contend with so many factors outside of their control.

When I think of what the President faced, I am reminded in a small way of Dwight Eisenhower's recollection of the Normandy invasion. He had done all he could to plan and to provide, but once he issued the fateful order—''Let's go!''—his subordinates scrambled to carry out their tasks, and he was left alone with a sudden realization: that he was now powerless to do more than to hope that his orders would be carried out successfully.

I can only imagine that a similar anxiety must have gripped the President as he issued orders which he hoped would bring answers—and arrests—in the wake of this tragedy. He must indeed believe himself to be fortunate that law enforcement agents across the country worked so doggedly and so well, and so successfully, even as much remains to be done.

But even with everything the President had to hope for in terms of carrying out an investigation, there still remained a duty that was his, and his alone, as President of the United States. There is no way for a President to delegate the responsibility of speaking for the Nation, and of providing a voice of resolution and reason when events have gone awry.

This action of the President has served this country so well in the days after the tragic event. Yet now there appears to be some scapegoating by him today. He first voiced the Nation's determination to bring the criminals to justice. He had steadfastly resisted the temptation to blame the tragedy on specific ethnic or ideological groups. And he gave voice to what so many Americans were feeling, the fundamental commitment to law and to peaceful order shared by nearly all Americans, no matter where they stand politically.

It is not a duty to be underestimated. At a time when so many Americans must necessarily feel themselves powerless to fight back against this cowardly attack, the need is great to have their feelings expressed, and to have them channeled into a constructive collective response to this tragedy.

In those first few days, the President, even as he worked to comfort the victims of the attack, succeeded in drawing a clearly understood line as to where this Nation stands. He asserted with great force and clarity that, on the one hand, Americans have a right to be suspicious of government, and to exercise their first amendment rights, their second amendment rights, and every other protected right. But this Nation cannot and will not tolerate the exercise of rights that include violent attacks on Federal officials, on their children, or anyone else.

I pray that none of us, including the President, become vindictive toward any group in America—whether they are Islamic Americans, conservative organizations, talk show hosts, or anyone else—we must remember that virtually all of these people are as horrified by this violence as are we.

The President spoke well soon after the tragedy when he left no doubt that Americans are not divided over these matters, but united in our commitment to law and order, in a way that law-abiding Americans as well as terrorists should be able to understand. And this was an important cathartic process for Americans as we coped with this tragedy.

I close by giving my thanks to those in our government who have worked so hard in these last days to ''bind the Nation's wounds.''

Mr. BRYAN. Mr. President, I was pleased to join with my colleagues in adopting Senate Resolution 110 which condemns the horrendous violence that happened in Oklahoma City and urges the administration to bring to justice those responsible for committing this evil crime. In addition, the measure expresses our deepest sympathy to the families that have lost so much and conveys our gratitude to all the Americans who have been assisting in rescue efforts.

Today, I would like to recognize those individuals from Nevada who have joined in the heartbreaking struggle to help our friends in Oklahoma. Dr. Scott Bjerke, a specialist in critical care at University Medical Center's trauma unit, Dave Webb, a fire specialist with the U.S. Forest Service, Metro Police Sgt. Bill Burnett, and Clark County fire paramedic coordinator chief Steve Hanson all are members of Clark County's elite 60 member Urban Search and Rescue Task Force which headed to Oklahoma City to assist rescue workers. In addition, the Clark County American Red Cross has sent Caroline Johnson, officer for the disaster computer operations, to Oklahoma City. In times of tragedy, there are always heroes. All the Americans who have been devoting endless time and emotions to ease the pain of so many are the true heros of this tragedy. I am proud that Nevadans have united together with the country during this time of such need. I thank these individuals for their commitment to others.

Although we cannot ever heal all the wounds both emotional and physical from this tragedy, I hope that those in Oklahoma will know that Nevadans are praying for them and somehow that will lessen their pain.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

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

The bill clerk read as follows:

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

Pending:

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

The Senate resumed consideration of the bill.

Mr. DODD. Mr. President, I rise this morning to express my strong support for the Product Liability Fairness Act, which is the pending legislative business before the Senate. Balanced reforms in this measure will help to promote fairness in the product liability system, help injured people get fair compensation for their injuries, allow businesses to get out of unjustified lawsuits, and improve safety conditions for working men and women in this country. With these reforms in place we will help alleviate the problems that undermine the present system.

I want to commend at the outset the principal authors of this legislation, Senator ROCKEFELLER of West Virginia and Senator GORTON of the State of Washington, for their hard work. They have worked tirelessly on this effort for a number of years. I am pleased to have joined them in that effort over

the last several years, and as an original cosponsor of this legislation.

It is very clear that our current product liability system does not work. It is broken. I think we have a need and an obligation to try to fix it. Over the years a wide range of my constituents—consumers, manufacturers, small businesses, and working men and women—have identified the key problem. Far too often the results you obtain in a product liability case depend not on the merits of your claim but on your ability to afford good counsel.

The statistics confirm what our constituents have been telling us. Under the present system, injured people must wait too long for compensation. Generally it takes an average of 2½ years for a claim to be resolved. A recent study by the GAO found that it can take up to 5 years for a victim to receive their justified compensation. The delays in the present system can—and I think do—lead to inadequate compensation. Many seriously injured people who lack the resources to pay their medical bills and support their families while waiting a decision cannot afford to go 5 years without compensation. They have no choice but to settle, and to settle in many cases for inadequate amounts.

While the present system is not serving the needs of our injured citizens well, it is also failing to meet the needs of American industry and business. Many of these industries are reluctant to introduce new products. When they look at their potential future liability, they see the different and distinct laws of 55 different States and territories staring back at them.

This uncertainty is particularly difficult for smaller businesses who cannot afford the huge legal costs of the present system. In too many cases companies are forced to run up enormous legal bills only to be vindicated by the courts at a far later date. Who is well served by a system that stifles innovation? Who benefits when businesses are forced to defer investment on research and development? Who wins under that kind of system? Of course, no one does. If American businesses are unable to bring innovative products to the marketplace or are forced to take healthful products off the market then we all lose.

Let me be specific. The search for an AIDS vaccine is a good example. The Commerce Committee of this body has heard testimony from Biogen, a company in the State of Massachusetts. It stopped work on an AIDS vaccine because of product liability fees.

Even more disturbing is the way in which 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:

> Product liability litigation has contributed significantly to the climate of disincentives for the development of contraceptive products.

As the American Medical Association points out, 25 years ago there were 13 American pharmaceutical companies researching potential products in the areas of contraception and fertility. Now there is only 1—from 13 companies down to 1. Clearly, we need to change the system that has bred these kinds of results. I think we can and we must do better.

Mr. President, with the passage of the Product Liability Fairness Act we will do better. This legislation would improve the product liability system for everyone. I want to emphasize that. This ought not to be a case of pitting attorneys against businesses and businesses against consumers. Everyone will benefit as a result of the improvements in this bill—the injured people who need fast and fair compensation, consumers who need quality products to choose from, and those American enterprises who are on the cutting edge of international competition, and the workers who depend on a strong economy to support their families.

The moderate reforms in this measure would reduce the abuses in the current system without eliminating solid protections for those who are victimized by defective or dangerous products.

I know my colleagues, Senators ROCKEFELLER and GORTON, have already gone through the bill in great detail. So I will just highlight some of the key provisions.

First, this measure would provide a far more uniform system of product liability. By adding more certainty to the system, the excessive costs in the present system would come down. This potential benefit motivated the National Governors Association to support this product liability reform measure. The association has said:

> The United States needs a single predictable set of product liability rules. The adoption of a Federal uniform product liability code would eliminate unnecessary costs and delay the confusion in resolving product liability cases.

Why is it important to quote the Governors here? Because some of the opponents of the bill have asked why we should be making changes at the Federal level when tort law is usually left to the States. That position ignores the fact that 70 percent of all products now move in interstate commerce. If the Governors of this country contend that a uniform Federal code in this area makes sense, then I think we ought to listen to what they are saying.

The provision in the bill that encourages the use of alternative dispute resolution would also help reduce the excessive costs in the current system. Currently, too much money goes to transaction costs—primarily attorneys' fees—and far too little goes to the legitimate victims that have been hurt.

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 of $10.2 million, the legitimate victims receive only $2.3 million, with the rest of the money going for legal costs and transactional costs. Clearly, we need to implement a better system in which the money goes to those who need it—injured people.

Consumers would also benefit from a statute of limitations provision that preserves the claim until 2 years after the consumer should have discovered the harm and the cause. In many cases today injured people are not sure what caused their injuries, and by the time they figure it out they have often lost their ability to sue. This legislation would provide relief for people in such situations and allow them adequate time to bring a lawsuit.

This legislation also includes a number of provisions that are simply common sense. Under the bill defendants would have an absolute defense if the plaintiff, the one who is claiming the injury, was under the influence of intoxicating alcohol or illegal drugs and the condition was more than 50 percent responsible for that person's injuries.

This provision, it seems to me, is nothing more than simple common sense. Why should a responsible company have to pay for the actions of someone who has, unfortunately, used alcohol or illegal substances? The company should not be held responsible, it seems to me, for that kind of an injury.

The bill also institutes reforms to assist product sellers. They would only be liable for their own negligence or for failure to comply with an express warranty. Product sellers who are not at fault could get out of cases before running up huge legal bills.

But as an added protection for injured people, this rule would not apply if the manufacturer could not be brought into court or if the claimant would be unable to enforce a judgment against the manufacturer. So we have provided a sense of balance here to try to see to it that people are not left without any recourse at all.

Striking a balance is at the heart of this bill. Again I wish to commend my colleagues from Washington and from West Virginia. This is a balanced approach. We need to keep that in mind. There are a lot of amendments that will be offered, and some may seem appealing, but when you consider them keep in mind the totality of what has been done and the balance we have struck.

This bill also contains an important section on biomaterials authored by my colleague from Connecticut, Senator LIEBERMAN. That provision is designed to ensure that manufacturers of lifesaving and life-enhancing medical devices would have access to raw materials which are absolutely critical in this important industry. In recent years, the supply of raw materials has been threatened by litigation. Those are the facts. I commend my colleague from Connecticut for crafting a very promising solution to that problem.

The provisions that I have outlined here, Mr. President, demonstrate the balance that this legislation strikes between consumers and businesses. In the final analysis, the reforms in this bill should strengthen our product liability system for everyone.

Of course, some of my colleagues are opposed to the measure—that is to be expected. They have raised some concerns, and certainly we look forward to the debates in the coming days. But I hope that we can avoid some of the inflammatory rhetoric that has characterized the debate on this issue in the past. This is a critically important issue involving the rights and responsibilities of injured people, of working people, of American industry, and we ought to treat it with the seriousness it deserves.

My involvement with this issue goes back to the early 1980's, Mr. President. At that time I had serious concerns about some of the product liability proposals before Congress. Along with our colleague who retired from the Senate, Jack Danforth, of Missouri, and with the help of Judge Guido Calabresi, who was the dean of Yale Law School at the time, we put together several proposals to deal with product liability. We never got very far with them. In fact, I do not think we got our ideas out of the Commerce Committee. We have come a long way. We are getting closer and closer to passing much-needed legislation in this area.

So I hope my colleagues will support, if necessary, cloture motions to allow us to at least have a chance to debate these issues and to determine whether or not the majority of this body wants to support this legislation.

Let me also say—and my colleague from Washington certainly is aware of this particular concern—there is a lot of attention being paid to the punitive damages section. I have concerns about setting limits in this area. I would much prefer a system that has been tried in a few of our States where the jury determines whether punitive damages should be awarded, but then have the judges determine the amount. In determining the amount, the judge would follow a set of guidelines. This approach, which is the law in Kansas, addresses the concern about excessive or ''runaway'' jury verdicts, while preserving the court's ability to punish certain egregious behavior.

I will not take the time here this morning to go into a longer discussion of this issue because I want the thrust of my remarks to be focused on the totality of the bill.

Again, Mr. President, I think this bill strikes an excellent balance. It is long overdue and represents a great step forward. Because we are so close to enacting these responsible reforms, I caution my colleagues against expanding the scope of the bill. For example, I know that some of my colleagues want to add medical malpractice provisions to the bill. I think that would be a mistake because it would jeopardize our ability to get this legislation enacted.

Because of these concerns, I will not be offering as an amendment a securities litigation reform bill that I coauthored with my colleague from New Mexico, PETE DOMENICI. Clearly there is a temptation to deal with various areas of the law under the broader heading of legal reform. But we need to be sensitive to the particular problems in each area of the law and not lump matters together.

So I will oppose efforts to expand the scope of this bill. If someone were to offer my bill on securities litigation reform as an amendment, I would oppose it. As many years as I have spent on it, it does not belong on this bill. So I hope my colleagues will keep this measure narrowly focused and help move it forward.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. What is the pending business? Are we operating under any unanimous-consent agreement?

The PRESIDING OFFICER. There was an agreement to recognize the majority leader to offer an amendment.

Mr. GORTON. I am authorized to report that the majority leader does not intend to take advantage of his right to offer an amendment at this point. As a consequence, the floor is open for amendments. I understand that the Senator from Kentucky intends to offer an amendment on medical malpractice, which is a very broad and significant amendment, and I hope can be concluded during the course of the day but nevertheless deserves considerable debate.

I think I also should like to announce that, of course, it is really the turn of the opponents to this bill to offer an amendment, and if any of them wish to do so at the conclusion of this debate, I would appreciate their informing me or my colleague from West Virginia so that we can try to see to it that amendments are dealt with in a fair order.

Before I yield the floor, Mr. President, I should like to say how much I admire the forceful and cogent and persuasive remarks of my friend from Connecticut, Senator DODD.

If I may make one or two more comments on a point of the Senator from Connecticut.

Perhaps the most important of all of the points had to do with the balance that adheres in this bill. It is the result of the work of many years and work among Members of somewhat varying opinions other than the proposition that something is broken and needs to be fixed in connection with our product liability laws. So we have not gone all the way as far as we might in drafting this bill.

We have attempted not to go from one extreme to the other extreme, but to come up with a solution that is fair to litigants, and that nonetheless will encourage the research and development of new products, marketing the new products, and the creation of economic opportunity in this country.

I was particularly struck by the forceful way in which the Senator from Connecticut spoke of the balance, the way we reached these goals. I also understand his concern with the present provisions on punitive damages. We and others are working together to see whether or not we cannot come up with a superior solution to that which is included in the bill at the present time.

But I do want to thank him for his most eloquent statement.

Mr. DODD. I thank the Senator.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Kentucky.

Mr. MCCONNELL. I thank the Chair.

Mr. President, I will shortly be offering an amendment, as the distinguished Senator from Washington indicated, with reference to the medical malpractice crisis that we have in our country. I will be offering this amendment on behalf of myself, Senator LIEBERMAN, and Senator KASSEBAUM.

This amendment, Mr. President, would expand the product liability bill to include health care liability cases. Medical malpractice reform is a perfect fit with the product liability reform effort underway here in the Senate. Overlap exists between these two issues, and if we do not reform them together, we could make the liability system even more complicated than it is now.

Take, for example, Mr. President, a lawsuit over an adverse reaction to a drug. The injured patient is likely to sue the doctor who prescribed the drug, as well as the manufacturer and the seller.

Now, Mr. President, if we only pass a narrow product liability bill, the drugmaker and seller would be covered under the product liability reform, but the case against the doctor would proceed under different rules. The result could be two separate cases involving the same set of facts.

Is that an improvement in the legal system? I think hardly is that an improvement.

So I say to my colleagues who support product liability reform, let us take a new look. Medical malpractice reform needs to accompany product liability reform. The problems within our health care liability system establish the need for the reforms contained within this amendment.

First of all, Mr. President, the liability system impedes access to affordable health care for many in our country. The Office of Technology Assessment reports that half a million rural women do not have access to an obstetrician to deliver their babies. Now, I know that is an acute problem in rural areas of Kentucky. The American College of Obstetricians and Gynecologists state that more and more obstetricians are giving up the practice and restricting themselves only to gynecology, one of

every eight, according to their 1990 study.

Let me share a few statistics with you. In Georgia, 75 counties lack maternity care; in Alabama, 2 counties; in Colorado, 19 counties have no maternity care whatsoever.

During the health care debate last year, I received a letter from Dr. Leonard Lawrence, president of the National Medical Association, whose membership consists of African-American doctors. He wrote, Mr. President:

> Minority physicians are particularly impacted by the current medical malpractice crisis. The combined costs of liability insurance and the threat of malpractice suits have caused many of our members to stop practicing in high-risk areas. The effects of these trends are painfully evident in minority communities. Minority physicians who have traditionally made a commitment to serve Medicaid patients are being forced to discontinue these services.

Mr. President, I know many of my colleagues who are opposing the legal reform effort argue that reform will have an adverse effect on women and low-income minority individuals. Well, this information demonstrates that our failure to enact reform is what harms the women and minorities in the United States who need medical care.

The second problem caused by the medical liability system is the decline in medical innovation. While doctors, as we know, practice defensive medicine by ordering unneeded tests and procedures, they are also less likely to take risks with treatment procedures and surgery because of the chances of getting sued. According to the General Accounting Office, a doctor has a 37-percent chance of being sued during the course of his or her practice.

And there is the related issue of biomaterial access on which Senator LIEBERMAN has been our most conspicuous leader. We need to ensure that raw material suppliers will sell their products to those who make important lifesaving devices.

A third problem, Mr. President, concerns the erosion of the doctor-patient relationship caused by defensive medicine. The dean of the University of Kentucky Medical School called my office this week to stress the importance of health care liability reform. He explained how hard it is to get young doctors to develop clinical skills when they can order a battery of expensive tests which will protect them in case of a lawsuit. Apparently, the chance of being sued has nothing to do with whether the doctor acted negligently. GAO reports that nearly 60 percent of all claims are dismissed without a verdict or a settlement.

Medical malpractice victims suffer from the same unpredictability of our civil justice system as other injured persons. Cases take too long to conclude, anywhere from 2 years to more than a decade. Of every dollar spent in the liability system overall in the United States, only 43 cents goes to the injured party. A full 57 cents of every dollar goes to the system itself, the lawyer and the court costs.

So, Mr. President, our goals here are basic and fundamental. First, to promote patient safety. Second, to compensate injured patients fully and fairly, but not to enrich the lawyers and the system; make health care more affordable and accessible; contain the costs of the liability system; strengthen the doctor-patient relationship; and, finally, encourage medical innovation.

Before I explain what our amendment does, I want to be clear about what it does not do. First of all, there is no cap on pain and suffering in this amendment. Doctors' groups advocate a cap on noneconomic damages of $250,000. The House included such a provision in its legal reform bill last month, but we chose to omit a cap on pain and suffering for several reasons.

First, there are circumstances where an individual suffers a serious injury but may have minimal or no economic losses. It seems harsh—not only seems harsh, it would be harsh—to tell such victims who have lost a limb or a sense of hearing, for example, that because they can go back to work, their damages are limited.

For too long, the proponents of reform have been attacked as trying to deprive victims of their rightful compensation. So we felt in introducing our medical malpractice bill that we could offer many, many significant improvements to the system short of limiting pain and suffering. Pain and suffering are part of compensatory damages awarded in an effort to make the victim whole. We can reform the liability system to make it more certain and more fair without limiting an injured party's right to be made whole, and that is why we omitted such a provision. There may be amendments offered to put a cap on pain and suffering, but that is not something that this Senator could support.

The second issue we omitted from our bill was the so-called FDA defense. That provision enables a company which obtained FDA approval for its device or a drug to be shielded from punitive damages. During last year's debate on a motion to invoke cloture on a motion to proceed to product liability, this issue was prominently discussed. Several Senators cited their opposition to this provision which was included in last year's product liability bill, and they cited that as their reason for opposing cloture.

So we wanted to avoid that controversy connected with the full medical malpractice bill. The FDA amendment may or may not be offered at some course during this debate and, as with the cap on noneconomic damages, I welcome the debate. There is no reason not to discuss those issues and let them come to a vote if others would like to proceed with that. But it is important to remember that with regard to the concern drug manufacturers have, they still would benefit to some extent by the cap on punitive damages.

As for our amendment, let me explain what is in it. I talked about what is not in it, now let me talk about what is in it.

First of all, it is basically the same bill with some changes —no, it is basically the same bill that myself, Senator LIEBERMAN and Senator KASSEBAUM introduced which was referred to the Labor Committee.

She, along with other members of that committee, made significant changes in the bill from its introduction as S. 454. The amendment contains a uniform 2-year statute of limitations, which is the same statute of limitations contained in the product liability bill.

The amendment addresses punitive damages in much the same way that they are handled in the product liability bill. Our amendment sets out the standard for awarding punitive damages, either intent to injure, understood the likelihood of injury and deliberately fail to avoid injury, or acted with conscious, flagrant disregard of a substantial and unjustifiable risk. Punitive damages may be handled in a separate proceeding, and the amendment sets out the eight factors that the court may consider in determining the amount. The amount of punitive damages is limited to three times the economic damages or a quarter of a million dollars, whichever is greater.

The definition of ''economic damages'' specifically includes replacement services in the home, such as child care, transportation, food preparation and household care. We sought to be as comprehensive as possible to make clear that those individuals who do not work outside the home would be made whole for their losses. The fact that an injured individual does not earn a significant or, for that matter, any salary will not mean that there would be no economic losses.

I am aware in the Labor Committee that Senator DODD successfully offered an amendment to eliminate the cap on punitive damages. We have declined to incorporate that amendment into this floor amendment because without a cap on punitive damages, you do not have uniformity, you have no chance of getting predictability into the system. To do so would make the medical malpractice section inconsistent with the product liability provisions, and it is important to keep these two issues on very similar tracks.

The amendment provides for periodic payment of future damage awards that exceed $100,000. Periodic payments must be made in accordance with the Uniform Periodic Payments of Judgments Act.

The amendment abolishes joint liability for noneconomic damages, including punitive damages.

Like the product liability proposal, the medical malpractice amendment provides that defendants are only responsible for their proportionate share of the harm caused. Like the proponents of the product liability bill, we

seek to put an end to lawsuits brought against a party because of its deep pocket. The amendment also reforms the collateral source rule to prevent double payment for the same injury. Amounts received by the individual from other sources, except those amounts paid by the individual or close family member, would be deducted from any damage award. The amount of the reduction would be determined in a pretrial proceeding, and evidence regarding the reduction could not be introduced at trial.

Further, Mr. President, the amendment limits lawyers' contingency fees to one-third of the first $150,000 and 25 percent of any amount over $150,000. Clearly, that benefits the victim so that the victim gets more of the money in these cases.

The amendment encourages States to adopt alternative dispute resolution and requires the Attorney General to develop guidelines for the States. The amendment sets forth a number of ADR options, including arbitration, mediation, early neutral evaluation, early offer, use of certificates of merit and no fault.

The amendment also contains a separate subtitle on protecting the health and safety of patients. It provides that 50 percent of punitive damage awards go to the State for licensing and disciplining health care professionals, as well as for reducing malpractice-related costs for health care providers who volunteer in underserved areas.

In addition, this subtitle requires the Agency for Health Care Policy and Research to establish a panel on patient quality and safety. Within 2 years, this agency would take the work of the panel and establish guidelines for health care quality assurance, patient safety, and consumer information. In the interim, this agency would report to Congress on the work of the panel in these areas. Credit goes to Senator JEFFORDS for his hard work on this provision and the great improvement he made on the original bill.

Finally, I want to mention the preemption provision. The opponents of legal reform have all of a sudden become advocates for States rights. They accuse the proponents of reform of hypocrisy for wanting to establish Federal standards in these areas. But I argue we are not the hypocrites. First of all, we are not changing the substantive law of negligence. Whether a doctor or hospital was negligent in the provision or administration of health care will still be a matter of State law. We are not creating any Federal cause of action where none exists. Neither product liability cases nor medical malpractice cases will wind up in Federal courts if they could not be there today.

Second, Congress has the ample power to set national standards in this area. As in the product liability arena, health care is a national issue. We spent weeks debating this subject last year. Medical products and drugs are in the stream of interstate commerce. Health maintenance organizations and other health care providers are national—I repeat national—organizations operating throughout many States. And health insurance is generally sold on a nationwide basis. While a particular doctor-patient relationship may be local in nature, the delivery of health care is part of interstate commerce.

Moreover, the Federal Government, through Medicare and Medicaid, funds a substantial part of the health care system. So the preemption provisions strikes a balance in creating a minimum national standard. Those States which have enacted, or which in the future enact additional restrictions on limitations, will supplement these national standards.

I am aware that Senator ABRAHAM, in the Labor Committee markup, successfully offered an amendment to allow States to opt out of national standards contained in this amendment. We have declined to include his amendment since we believe that preemption strikes the delicate balance needed in this area.

There is much more to say about this amendment, and I am sure we will all have an opportunity to express our points of view during the course of the debate. The effort here is to improve and strengthen the bill so doctors and hospitals are treated similarly to medical device and drug manufacturers and sellers.

Mr. President, this is indeed a national problem.

AMENDMENT NO. 603 TO AMENDMENT NO. 596

(Purpose: To reform the health care liability system and improve health care quality through the establishment of quality assurance programs)

Mr. MCCONNELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for himself, Mr. LIEBERMAN, and Mrs. KASSEBAUM, proposes an amendment numbered 603 to amendment No. 596.

Mr. MCCONNELL. 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. MCCONNELL. I yield to the Senator from Wyoming [Mr. THOMAS].

AMENDMENT NO. 604 TO AMENDMENT NO. 603

(Purpose: To provide for the consideration of health care liability claims relating to certain obstetric services)

Mr. THOMAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. THOMAS] proposes an amendment numbered 604 to amendment No. 603.

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

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will read the amendment.

The assistant legislative clerk read as follows:

At the appropriate place in the amendment insert the following new section:

SEC. . SPECIAL PROVISION FOR CERTAIN OBSTETRIC SERVICES.

(a) IN GENERAL.—In the case of a health care liability claim relating to services provided during labor or the delivery of a baby, if the health care professional or health care provider against whom the claim is brought did not previously treat the claimant for the pregnancy, the trier of the fact may not find that such professional or provider committed malpractice and may not assess damages against such professional or provider unless the malpractice is proven by clear and convincing evidence.

(b) APPLICABILITY TO GROUP PRACTICES OR AGREEMENTS AMONG PROVIDERS.—For purposes of subsection (a), a health care professional shall be considered to have previously treated an individual for a pregnancy if the professional is a member of a group practice in which any of whose members previously treated the individual for the pregnancy or is providing services to the individual during labor or the delivery of a baby pursuant to an agreement with another professional.

Mr. THOMAS. Mr. President, this is an amendment to the amendment of the Senator from Kentucky which addresses, overall, malpractice liability. This has to do with specific problems that arise in rural areas. It seems to me that rural area families across America deserve access to quality health care, and that is a problem we deal with from time to time. We need to search for solutions that reduce infant mortality rates, provide comprehensive prenatal care and yet allow for us to stand ready to serve in times of emergency. The rural obstetric care amendment is part of that solution.

This amendment to rural obstetric care compliments the effort of the Senator from Kentucky. It addresses a specific problem in rural areas, recruiting and retaining obstetric providers. It helps women obtain quality prenatal care and assists rural communities in developing a reliable and successful health care delivery system.

Some of these liability problems are unique to rural areas, such as limited access, of course, to patient medical care and the history of these patients through a period of time. Some areas in my State have little or no opportunities for prenatal care. The long distance of driving exists. I think, particularly, of one good-sized town of Rawlins, WY, in which, quite often, expecting mothers do the prenatal care in Rock Springs or in Laramie, WY, both of which are more than 100 miles away; and, quite often, they need emergency care in Rawlins when the delivery time comes, and they find themselves going

for emergency care to a different physician. That is basically what we are really talking about here. Because of these distances and because of the unique rural problems, there is a dropout rate in delivery. So that providers delivering a baby often are providers that have not had an opportunity to see the mother prior to the treatment.

Shortage of practitioners in obstetrics, to a large extent, is due to high insurance premiums. So this amendment simply raises the evidentiary standards to clear and convincing for health care services provided during labor or delivery of a baby. It only applies to health care professionals who did not previously treat the individual. It does not apply to providers who are on call or filling in for colleagues who are expected to have that information.

So it is a rather simple amendment that provides for this movement to a higher level of evidentiary standard. There are, of course, a number of questions that could be asked that are somewhat mythical, I think. For instance, does this exempt certain groups of providers? It does not. The usual standard—the preponderance of evidence—remains in place for the doctor's own patient. Two is that it imposes an unusually high burden of proof. That is also not true. The clear and convincing standard is only slightly higher than the standard preponderance of the evidence and is significantly less than the standard of beyond a reasonable doubt. Some ask, does it eliminate the right to trial? It does not. Women are still permitted to sue the provider. And if negligence is found, the woman recovers full damages.

Does it discriminate against women? Wrong. Women in rural areas would benefit. The intent of the amendment is to encourage health care professionals to continue providing obstetrics to women who may not have a physician or who are unable to get to their physician.

Let me quote from Phyllis Greenberg, executive director of the Society for the Advancement of Women's Rural Health Research:

> Unintended adverse reactions in a few should not create a threat of liability so great as to disadvantage the many who benefit.

Part of the benefit of the amendment would be to have an impact and to reduce malpractice premiums for obstetric providers in rural areas.

Let me share a little bit of the problem that we have in some rural areas. Let me compare the premium rates in Wyoming for health care providers: $42,275 a year for OB/GYN specialists, compared to $9,800 for pediatricians, $9,700 for internal medicine, $27,000 for general surgery, $17,000 for emergency physicians, $10,000 for general practitioners without OB/GYN services coverage. On the other hand, $26,000 for general practitioners who have OB/GYN.

We can see clearly that practitioners in small towns that have relatively few opportunities for obstetric services simply do not do it unless it is an emergency and because of the cost.

Further comparing Wyoming's $42,000 average malpractice premium for OB/GYN among the Rocky Mountain States, $22,000 in Idaho, $23,000 in Utah, $25,000 in Montana. So we have a problem and one that I think could be relatively easily mitigated here.

It complements State obstetric liability laws; 25 States have statutes on the book recognizing the need to provide relief for obstetric providers, full-fledged immunities for drop-in delivery cases.

We think, also, that it would help recruit and retain obstetric providers. In rural areas of 105 family practitioners, in Wyoming only 27 provide obstetric services. For specialists, there are only 25 OB/GYN providers in the State delivering babies. That is 52 physicians trained in obstetrics to cover 90,000 square miles.

In the city of Sheridan there are only two providers. We used to have eight. One current provider watched his premium rise from $4,000 a year in 1978 to $35,000 a year in 1995.

There is some background for this proposal, and this amendment was included in Jim Cooper's Managed Competition Act last year and the Rowland-Bilirakis Consensus Act of last year. Bob Michel's Affordable Health Care, a new act, included provisions of this kind. Majority leader BOB DOLE's alternative health reform proposal includes this as well.

So, Mr. President, this amendment to the bill of the Senator from Kentucky helps women and families across rural America obtain quality care. It helps rural communities fend off physician shortages, plaguing health care service delivery systems. It lowers health care costs, so consumers may pay the true cost of medical service instead of that cost inflated by malpractice premiums, and it complements overall malpractice reform.

I yield the floor.

Mr. KENNEDY. Would the Senator be good enough to yield briefly for a question or two on his amendment?

Mr. THOMAS. Happy to.

Mr. KENNEDY. I appreciate the chance to address the Senator on the amendment. I believe this was a matter that was given some consideration in the Human Resources Committee and eventually dropped in the final legislation that was passed out of the committee.

Let me ask a question: For example, effectively this immunizes a doctor from any negligence suit, am I correct, if that doctor had not treated the patient prior to the time of delivery?

Mr. THOMAS. No, I think the Senator is not correct. It simply raises the standard of evidence to the immediate level. It does not immunize if there is malpractice here, if liability is here. The difference and the purpose here is that this physician who delivers this baby has not been a physician that has been in the case for prenatal care and, therefore, is given, under this amendment, simply a clear and convincing standard as opposed to the preponderance of evidence. I think the Senator is not correct.

Mr. KENNEDY. Could the Senator explain why we are having a different standard for the delivering of babies, why we have a different standard than the preponderance of the evidence?

What is the Senator's reason, again, if the Senator would share it. This is somewhat different. I asked to have the amendment read because we had an amendment that was also focused upon obstetricians in the earlier draft of the malpractice legislation, and now we have another approach.

I am just trying to understand. I think it is a different standard that would be for those doctors that would come on and treat an expectant mother. Can the Senator indicate to the Senate why we ought to have a different standard, why doctors ought to be held to a different standard at the time of the delivery of a baby from the preponderance of the evidence standard? What is the rationale? What is the justification of that?

Mr. THOMAS. I think the justification is to provide delivery services for mothers in a community where there would not be services otherwise.

For instance, a general practitioner who might normally deliver babies, because of the cost of malpractice insurance simply does not do that. So the expectant mother has, through the pregnancy, gone to Laramie, 150 miles away.

But then comes an emergency. What we are doing is we are saying to this physician, although the physician does not do this as a normal thing, who is not able to pay this extraordinary amount of money, that we will provide some sort of a higher standard here because the physician is doing this not as a regular practice but as an emergency treatment process.

It is not designed to have anyone with less competency. It is not designed to do that, but to encourage services where there are none.

Mr. KENNEDY. Well, Senator, is this limited just to emergency provisions? I am still trying to get from the desk a copy of the amendment. I apologize to the Senator.

Is this applied solely to an emergency situation as described in the response to my question?

Mr. THOMAS. It applies only to people, to physicians and providers who have—they are either on call or they are part of a group. In that case we would have expected them to participate in the previous information regarding this patient.

So this applies only when we go to this physician not having been involved with them previous to that.

So, basically, yes, it does limit it only to that circumstance where this

physician has not been a party to the care prior to the delivery. That is our intention, Senator. If that is not the case, we would like to make it clear.

Mr. KENNEDY. Well, I have the amendment. As the Senator knows well, effectively the Senator is saying to the mother and the child, effectively, that under this amendment it says, ''The trier of the fact may not find that such professional or provider committed malpractice and may not assess damages against such professional.'' You are immunizing, getting a different standard for those doctors.

Does the Senator know, could the Senator indicate what the basis is for the amendment, where the hearings were, what the testimony has been, who we have heard from?

Mr. THOMAS. Let me suggest a couple of things. First of all, the whole world is not in boxes. There are differences in terms of the availability of services, and we are seeking to deal with that.

Second, it does not immunize, and I already have spoken to that. It simply raises that level of evidence. In fact, it says in the amendment, the Senator I am sure read that, it may not assess damages against such professional unless malpractice is proven by clear and convincing evidence. So it certainly does not immunize it.

Let me say, further, as I said before, the Senator talked about the previous consideration, and it was part of Representative Cooper—we worked, as the Senator knows, and the Senator worked very hard last year in health care. These things were not out of the blue. It was in Mr. Cooper's bill and in the Rowland-Bilirakis bill. It was in BOB DOLE's bill. It is not a new idea, and indeed has been discussed at great length.

Mr. KENNEDY. The Senator's reference with regard to Boston—this applies to Boston as well as rural America. The fact is, you have, in this language, ''* * * the trier of the fact may not find that such professional or provider committed malpractice * * *.'' and then you have, ''* * * and may not assess damages * * *.''

It says it ''* * * may not find that such professional or provider committed malpractice * * *'' That is what the amendment says. You can define it in whatever way you want, but that is what it says. Then it continues, ''* * * and may not assess damages against such professional or provider unless the malpractice is proven by clear and convincing evidence.'' This says ''* * * professional or provider committed malpractice * * *.''

I just wonder why we are, with the amendment—we will have a chance to talk about this in greater detail—but why we are suggesting this particular amendment to the families of this country? I think whether a doctor is delivering—I can see a circumstance where he is immunizing, a particular doctor in a group practice, that they are going to send in the person who has not been working with the expectant mother because they want to have a lesser standard, or immunizing the doctor against malpractice.

Are we trying to encourage the practice of obstetricians who may have lost their licenses or may be under some other kind of penalty? Are we immunizing them against practicing in terms of gross negligence or other kinds of negligence?

This amendment is very clear, and it does apply to Boston. There is nothing in here about rural America. It is talking about all doctors: ''* * * may not find that such professional or provider committed malpractice * * *'' It says ''* * * and may not assess damages * * *'' ''* * * and may not assess * * *'' But it says ''* * * committed malpractice * * *.''

I do not know—is the Senator familiar with where the greatest number of obstetricians are in this country at the present time? And what the rates for malpractice insurance are in those particular areas? You have the highest number of obstetricians in the country now out in Long Island. They have the highest rates of malpractice insurance. What is the point the Senator is talking about?

Where is the testimony that this is going to produce greater services to people in either urban or rural areas?

Mr. THOMAS. If the Senator will yield, it was my understanding you were going to ask questions and not——

Mr. KENNEDY. I am asking the question where is the testimony, where is the hearing? I will be more precise.

Mr. THOMAS. Yes, I already went through that. I told you we went through that last year in several places.

If the Senator will support this, we would be happy to put in, in our second one here, that is only under the definition by the Public Health Service of rural areas.

I am sure that is not the case. I am sure the Senator is not talking about my amendment. He and I have quite a different view of what we ought to do on malpractice, and I understand that.

Mr. KENNEDY. I am just trying to find out what the amendment says. I am just reading the language in here——

Mr. THOMAS. You are—you are misreading.

Mr. KENNEDY. What it says on it, and asking for your explanation.

Mr. THOMAS. We do not read it the same.

Mr. KENNEDY. We have urban areas as well as rural areas. Public health does that. We have what is in the nature of underserved areas in urban areas. So I do not know that helps the Senator's position. I do not understand the Senator.

The PRESIDING OFFICER. If the Senator from Massachusetts will suspend, the Senator from Wyoming has the floor.

The Senator from Wyoming.

Mr. THOMAS. I have tried to explain the answers. No. 1—let me go on just a little bit further.

If the Senator would feel more comfortable, we will be happy to put in ''* * * as defined by the Public Health Service.'' So it would be, indeed, rural areas.

Mr. KENNEDY. Senator, may I ask you, on this point that you just mentioned, are you suggesting that the Public Health Service only defines underserved areas as being rural areas?

Mr. THOMAS. There is a definition, as the Senator well knows. I will cite it for him if he would like; section 330 (b)(3), or 130–27 of the Public Health Service Act, which defines underserved areas.

Mr. KENNEDY. That also includes urban areas; does it not?

Mr. THOMAS. I suspect so. It defines rural areas.

Mr. KENNEDY. What is the Senator's point? Are you trying to say you would offer this if I would agree with it? The point I am making is I do not want poor practice in rural areas or urban areas.

Mr. THOMAS. We are not talking about poor practice. We are talking about providing services where there is none, Senator.

Furthermore, and then I conclude here, I think if the Senator wants to read it fairly, it says ''* * * may not find that such professional or provider committed malpractice and may not assess * * *.'' That is all one sentence. The Senator divided that.

I understand you do not agree. You do not want malpractice insurance. I understand you do not want to change the legal system, Senator, but I do. These are the reasons, and I think very legitimate ones.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I was going to ask of the Senator, finally, whether he was familiar with the fact the Senator from Kansas, Senator KASSEBAUM, dropped this very provision when these matters were brought to her attention in the course of the committee. They were dropped by the Senator. That, you know, happens to be the chairman of the Human Resources Committee, where many of these measures were read.

I am asking and inquire why the Senator from Wyoming is convinced of it when the other members of that committee, who have prime jurisdiction, felt they ought to drop it?

Mr. THOMAS. I will answer the question. I ask if the Senator always agrees with the Energy Committee if they drop something?

Mr. KENNEDY. If you could explain why?

Mr. THOMAS. I will. I have explained. I shall explain one more time.

This comes from experience in our own State, Senator. We worked with this sometimes. We have difficulties in

recruiting physicians for these areas. We are seeking to find a way to provide services, in my case, for areas that are basically rural. I am here to defend my constituency, as you are. We have problems and they are unique problems, and I think this is an approach to do that. That is what I am seeking to do.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I cannot possibly understand the rationale. If I could just have the attention of my friend from Wyoming?

I am prepared to see that the people in Wyoming make up their own judgment of malpractice. It is the Senator from Wyoming who is supporting the position that is going to preempt the States. The Senator's point is absolutely correct. Malpractice ought to be decided in the States. It ought to be decided by Wyoming what is in the interests of Wyoming. I am for it.

I think Wyoming ought to make a judgment and decision in terms of the standards, whatever you want to do out there. That is the position of the Senator from Massachusetts. That is not what this bill is going to, and what the Senator is amending. They are basically preempting the States with one Federal standard. And that is different from the product liability.

Product liability applies to products that are shipped interstate. This is the most sensitive relationship between a doctor and a patient. And why does Washington know best on this? The Senator has made my case. He ought to oppose the McConnell amendment for the very reasons that the conditions in Wyoming are different from Massachusetts.

Mr. THOMAS. May I ask a question?

Mr. KENNEDY. They are different from Boston. I will yield for a question, but I—I will be glad to yield for a question.

Mr. THOMAS. Will you explain to me why you were the major proponent of Federal health care last year?

Mr. KENNEDY. Of course. I will be glad to do that. There are very few people who have not heard me explain it.

That is because I think decent quality health care for all Americans ought to be a right and not a privilege, Senator, for Members of the Congress of the United States like you.

Mr. THOMAS. And the Federal Government ought to provide it?

Mr. KENNEDY. Regular order, Mr. President. I have the floor.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. I have a very good program. I pay $103 a month. The Senator from Wyoming pays about $300 a month.

The difference with the Senator from Wyoming and Massachusetts is that I want the American people—in Massachusetts and Wyoming—to have the same thing that we have. I was also interested during the time of the Contract With America that we came in and said, ''Look. Whatever applies to Congress ought to apply to the American people.'' And everyone made their speeches and supported it. That is what we did.

The other side of the coin is all of those Members that have the Contract With America have national health care. They have good health care. They are covered. The Senator from Wyoming is covered, like 40 million other Americans are not covered, like the additional 1 million that became not covered in the last year of which 800,000 are children who are not covered. The difference with the Senator from Wyoming and the Senator from Massachusetts is I would like to make sure that the people of my State and the State of Wyoming have the same thing the Senator from Wyoming and I have. That is entirely different from what we are talking about in terms of the malpractice and the whole question of liability.

Mr. THOMAS. And States rights.

Mr. KENNEDY. States rights—the Senator is arguing my position on this issue. If I could, I have the floor. I would like to continue.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Massachusetts has the floor.

Mr. KENNEDY. I would like to continue.

The PRESIDING OFFICER. The Senator from Wyoming will suspend.

Mr. KENNEDY. Under Senator MCCONNELL's position, effectively you have preemption of the States under any of the State laws that apply anything that is more favorable than is differentiated from the Senator's legislation that advantages the consumers. You preempt State law; preempt them. This great body of leadership that says, ''Why don't we block grants that Washington does not know best, let us let the States do that'', that is what I am for on the malpractice. That is not what the McConnell bill does. And the Senator from Wyoming is offering an amendment on the McConnell bill that will set Federal standards, and preempt States rights. The McConnell bill preempts States rights.

When we offered an amendment in the Human Resources Committee to effectively eliminate the preemption of States, it was defeated. I would welcome the opportunity to cosponsor a second-degree amendment that will preserve that on the McConnell amendment right now. I welcome the opportunity. If you want to preserve the States rights of what Wyoming knows and Wyoming knows best, Massachusetts knows and Massachusetts knows best, let us do a joint amendment right now to the McConnell amendment. I propose that.

Mr. THOMAS. I am a little puzzled. May I ask a question?

Mr. KENNEDY. Yes; certainly.

Mr. THOMAS. First of all, the Senator from Massachussetts talked about the committee, that that which was proposed was dropped at the staff level. It is supported by the chairman. No. 2, the Senator has gone on. I watched. Here is the Senator's States rights business from last year. Do not tell me that you are for States rights. Look at this. Here is your health care package. Tell me there is States rights in that.

Mr. KENNEDY. Would the Senator read the malpractice provisions in there where we do not preempt the States? Will the Senator at least be honest enough in terms of talking about this measure of malpractice, be honest enough to look and find out what our committee did with regard to States rights last year? That is all we are asking. I mean, let us not get away from the fundamental issue which is before the Congress on the McConnell proposal. That is whether we are going to have a Federal preemption of States on the issues of tort reform or whether we are going to let the States make that judgment and that decision. That is the essential part on the whole tort reform debate that we are having here in the U.S. Senate.

The Senator has offered an amendment to that, not to preserve the State of Wyoming rights to make its own judgment. That was not in the Senator's amendment. You have gone to effectively immunize obstetricians from the malpractice and use a whole different standard of evidence at times of trial. That is an entirely different kind of issue. If the Senator wants to have Wyoming do what Wyoming wants on this malpractice, the Senator is welcome to have the opportunity to do so.

Mr. President, unless there is anything further or any other inquiry that the Senator would want, I would like to address the underlying measure that we have before us.

I see the Senator from Kentucky is now here. If I could just ask. As I understand it, this effectively, just for general clarification or point of information, this is basically the measure that was reported out of the Human Resources Committee without the Dodd amendment and without the Abraham amendment and as currently being amended by the Senator from Wyoming.

Mr. MCCONNELL. I say to my friend from Massachusetts, this amendment essentially is not what was reported out of the Labor Committee but rather the bill introduced earlier in the year by myself, Senator LIEBERMAN and Senator KASSEBAUM.

Mr. KENNEDY. The point probably does not make much difference to the Members. Here we have had the measure that was before the Human Resources Committee and had gone through a period of markup by the members of that committee and was reported out just a few days ago reflecting the members' judgment on the Human Resources Committee. Now we have a different measure here on the

floor of the Senate. The Senator is obviously entitled by the rules of the Senate to proceed in that way.

There was a time when we Republicans and Democrats alike were trying to see if we could not work out some of the particular measures. Last year, when we dealt with the malpractice provisions, we ended up with a virtually unanimous vote on the malpractice provisions as part of the overall health care reform—a lot of diversity in this body, a lot of willingness to spend 2½ days in our Labor and Human Resources Committee considering this issue, and, at the end of it, we ended up with a unanimous vote. During the course of the consideration of what is basically the underlying McConnell amendment, I offered that as an alternative. The measure which had Republican and Democrat support. I will get into more description of it later in the course of this debate. And it was rejected. But, nonetheless, the Human Resources Committee reported out that measure. It was reported out. I thought at least if we are going to be debating the malpractice issue that we would have an opportunity to do so. But that is not the circumstance.

Mr. President, let us take in the McConnell amendment the health care liability reform. Let us take the findings. Findings become more important particularly in the wake of what has happened in the last hours over in the Supreme Court on the whole issue of handguns. With these findings we are finding out that the Supreme Court is paying attention, that they have to relate to the follow-on provisions of the legislation. We are reminded about that. We have been reminded over a period of years in circuit courts and now certainly by the Supreme Court.

Let us just begin by taking a look at the McConnell amendment on the findings. It says Congress finds on health care the following: Effect on health care access and costs. And from the title of this finding one would think that this bill is just what the doctor ordered. At the heart of health care crisis facing working families and health care access and cost is that we have 40 million citizens who have no health insurance to protect them against the high cost of medical care, and even those who have insurance cannot be confident that it will be there to protect them in the future if they become seriously ill. The cost of medical care is burgeoning the family budgets all over this country. But just read on.

So we would expect that the rest of the measure will have some relevancy to the effect of health care access and cost. Those are the two elements in the health care crisis, the 40 million Americans who do not have any, increasing numbers that are losing in the employer-paid system, and the continued escalation in terms of the health care cost.

It goes on. The next provision says the civil justice system of the United States is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients. I certainly agree with that where we have only 10 percent of the victims of malpractice ever bringing a suit. I have here in my hand Business Week, March 27, shown to me by my good friend, Senator HOLLINGS, from South Carolina, who was here just a few moments ago. It points out in this article of just a few weeks ago:

> One issue often neglected in the debate over malpractice insurance is the system's efficiency in compensating injured patients. The most exhaustive look at this issue is a recent study of 31,000 hospital admissions in New York State by a Harvard University team headed by Paul Weiler, Howard Hiatt, and Joseph Newhouse. Its findings: Some 4 percent of admissions involved treatment-caused injuries. One-fourth of the injuries involved negligence. One-seventh resulted in death.
>
> On average, only one malpractice claim was filed for every 7.5 percent of the patients suffering a negligent injury and only half of these were ultimately paid. So, ''The legal system is paying just 1 malpractice claim for every 15 torts inflicted in hospitals.'' Those suffering nonnegligent injuries—that is, caused by care not yet deemed inappropriate—got nothing. Thus, the study concludes that rather than a surplus, there is a litigation deficit because so many injured people wind up uncompensated.

You have the question now about whether the civil system is working in a way to try and deal efficiently with the malpractice which is taking place and how can it be done more effectively. We had an option and an alternative to do that, which was bipartisan, which has effectively been rejected and now we are back to the McConnell amendment that goes on and talks about, ''The civil justice system of the United States is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients.''

I would certainly agree with that. And all the material that we have looked at would certainly underscore that.

Only 10 percent of the victims of malpractice bring a suit. Many victims who receive awards are undercompensated, due to the caps on damages imposed by almost half of the States. When cases go to trial, doctors win 60 percent of the cases in which, independent studies have concluded, they were, in fact, negligent.

So I would support a bill that addresses these problems, although it certainly would not be a serious solution to the problems of cost and access. But this bill only tips the balance further in favor of the health providers and farther against the working men and women who are the victims of the practice.

Let me read on.

> And the problems——

This is from the measure that we have before us.

> And the problems associated with the current (malpractice) system are having an adverse impact on availability of, and access to, health care services and cost of health care in the United States.

Two million people lose their health insurance every month, and if you can find one who lost it because of the medical malpractice liability system, I would like to meet him.

We will spend $1 trillion on health care this year. That number will double in the next 10 years. Medical malpractice premiums account for about 1 percent of that total and premiums are not even rising significantly.

Even the AMA cites estimates that the costs of ''defensive medicine'' account for only 2.5 percent of health spending. Both the OTA and CBO concluded that tort reform like the kind provided in this bill would simply not produce any reduction in those figures. Is it not time we got serious about dealing with the health care costs instead of pretending that bills like this will do anything other than victimize patients to benefit providers?

It is interesting that one of the first measures that we are dealing with on health care, with all of the problems that we are facing, with the number of Americans who are not covered, with the increasing number of children who are not covered—and those numbers are increasing—with all the problems that our seniors are having in terms of affording prescription drugs, all the needs that are there in terms of home delivery services, all the difficulties and challenges that we have in terms of the health care crisis, we are dealing with this issue of the malpractice reform in a way that is going to preempt the States from dealing with this issue, which they have had for some 200 years, and at a time where the case I think has yet to be made why this is necessary.

And let me just mention very briefly, I hope those who are going to support it will explain to the Senate why we need it. First of all, the number of malpractice cases has been declining over the period of the last 5 years.

Second, the malpractice premiums for the medical profession have been declining over the period of the last 5 years.

Third, the awards for malpractice that have been made in the various courts have been declining for the last 5 years.

And finally, the profits of the industry, the insurance industry in dealing with malpractice have been going up through the roof, going up through the roof. We are not where we had been a number of years ago when we saw many of these companies saying, look, we just cannot—we are going to get out of this whole area of malpractice. We just cannot afford it. We just cannot go forward with it. We just cannot deal with it.

The fact is this malpractice insurance is enormously profitable to the insurance industry. And rather than leaving the insurance industry, it is highly competitive and more and more companies are going into this kind of

coverage. The publications of the insurance industry reflect that and the profits of the various companies sustain it.

And so we have a situation where there is, Mr. President, an important need in terms of covering the American people. The best estimate is anywhere from 80,000 to 100,000 people die a year from negligence and malpractice—80,000 to 100,000 people die a year, where only a small fraction of negligent malpractice cases are even brought, and where review after review of even those that are brought, where there have been findings that there has been review of those cases by doctors and professional groups, suggests that those findings by and large have been fair and that any review of the total numbers of cases that have been brought over the period of the years would justify additional kinds of findings as well.

Here is Business Insurance: ''Insurance Malpractice Coverage in Stable Condition.''

Despite the rapid change in health care delivery, the price of medical malpractice and professional liability coverage for health care organizations remains stable and capacity is plentiful. Most hospitals and health care systems will renew their liability coverage as in 1994 in part because of a decrease in claims severity and frequency for most health care organizations.

It goes on and talks about there is more capacity, there are more players than 3 years ago.

It seems like every month a new insurer wants to underwrite medical liability coverage for health care organizations.

Business Insurance, the publication for the insurance industry, says this is an area to get in, the profits are there. The total numbers, the statistics show that the awards, the numbers of cases, the judgments are going down and that the principal problem that is out there is people who are subject to malpractice are not being compensated. And what are we doing here with the McConnell proposal?

What are we doing here? We are effectively saying to Wyoming, to all 50 States, that we know best on the issue of tort reform; that we are going to have a preemption, one-way preemption. If your State, for example, was to provide some additional kinds of protections in terms of consumers, we will preempt you.

Now, in the Labor and Human Resource Committee, the Abraham amendment said: All right, we will preempt you, but if the State wants to get out from underneath the preemption, that will be accepted. And that was accepted by the committee.

But not in the McConnell amendment; not in the McConnell amendment. It is a one-way preemption.

I see other Members who want to speak to this issue, so at this time I will just conclude.

It is difficult for me to understand, Mr. President, why we are taking an issue which is so personal, involving a doctor and a patient, in which the States have worked out their own accommodations, where the Congress is not being pleaded to by the States for Federal action, and while the industry itself is successful, experiencing record profits in this area—I will get into that later on in the discussion—why we are being compelled to say that we will have a one size fits all, effectively saying that we here on this issue, which is so personal between a doctor and a patient, so personal, that we are going to have to have a Federal solution. And that is what the McConnell amendment is doing.

I find it just troublesome, as I mentioned earlier, where we have all the challenges that hard-working families are facing in this country, that workers are facing, wondering whether they are going to continue to have the coverage that they have today, where working families are worried about whether their parents are going to be covered, where working families read about the cuts in Medicare that are going to be coming down the road, where most of our seniors are paying $1 out of $4 in terms of out-of-pocket expenses for additional health care needs. They are concerned about them. They are concerned about their children, whether their children are going to get decent quality health care.

And we see, with the Carnegie Commission report and the other reports, the total number of children that are not being covered. With all the needs that are out there, here comes the U.S. Congress and Senate saying, ''On this one, we are going to look out for the industry and the AMA.'' That is what this is all about. That is what this is all about.

Mr. President, basically, there should be adjustments, there should be changes made in the current system. We ought to be encouraging alternative dispute resolutions. We ought to give experimentation to the States to be able to do that.

In our proposal last year, we even had limitations in terms of the contingency fees in a bifurcated way, in terms of the early payments and later kinds of payment. We dealt with collateral issues. We dealt with the experimentations that would be taking place in States so that they could develop practice guidelines and consider, if they used practice guidelines, whether we could create rebuttable presumptions.

We talked about encouraging States to develop enterprise liability. We even supported creating no-fault liability so that States would create the funds and all that individuals would have to be able to do is show that need, not even negligence, to be able to recover. We were prepared to consider all of those measures.

Those of us who are opposed—at least this Senator is opposed—to the McConnell amendment understand that we have to provide some changes and some alterations. We were prepared to do so and are prepared to do so. We made some changes even in this proposal that was initially put forward before our committee during the course of the deliberations. But we, at this time, do not have that measure before us.

I see other Members who want to speak, and I will come back to address this issue at a later time.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I have the floor. I wonder if I could just for a moment have a discussion with my colleague from Connecticut. I know he was here for a while, but I stayed on the floor. I do not want to push in front of him. Would my colleague mind if I went forward with my remarks right now?

Mr. LIEBERMAN. Mr. President, I appreciate the courtesy of my friend from Minnesota. It may sound a little strange, but if he is prepared to speak at length, I would be happy to allow him to go forward.

Mr. WELLSTONE. I say to my colleague, I am prepared to speak at length.

Mr. LIEBERMAN. I had guessed that.

Mr. WELLSTONE. Would that be all right?

Mr. LIEBERMAN. Yes. I appreciate the Senator's kindness.

Mr. WELLSTONE. Mr. President, I was at a gathering yesterday with citizens from all over the country. Their personal stories are often not a part of this debate, but they should be. Many of them have been injured, many of them have been hurt, some of them have lost loved ones. God forbid that any of this should happen to any of us or our families or our loved ones.

Mr. President, the question that they were asking was: What is the purpose of the underlying bill, this ''Product Liability Fairness Act?'' I see nothing fair in it, and I will talk about that, or this amendment, the McConnell amendment, or the second-degree amendment to the McConnell amendment.

What is this rush to somehow protect whom from claimants? Why the effort to tip the scales of justice against people who have been hurt, all too often in behalf of people who have been negligent, all too often on behalf of large corporations, insurance companies, you name it?

Mr. President, I will get to the specifics of this medical malpractice amendment, and I will talk about the underlying bill as well, but I would like to start out on a more personal note as a Senator of Minnesota.

Mr. President, let me first of all make it clear that in some editorials it has been suggested that this debate is really a debate between the trial lawyers of the United States of America and the rest of the country. That is just simply not true. There are many citizens, the consumers of this Nation,

that I think also need to be and have been present in this debate.

So with a little bit of hesitation, I will use some pictures—but this comes with the permission of Minnesotans, of the families affected—because I think the faces of people that are affected by this, I think the people themselves, their voice ought to reach into this Chamber now.

Kristy Marie Brecount was a happy—''was,'' past tense—active 7-year-old girl from Edina when she went to the hospital to get her tonsils removed, as many children her age do.

I do not know where the hospital was and in no way am I suggesting that this was in Edina. That is not the point.

It was an elective procedure. The hospital personnel improperly hooked up the machine that was to provide the anesthesia for the operation. They attached the hoses backward. As a result, she received 10 times the amount of anesthesia she was supposed to get, leading to a fatal cardiac arrest.

This is a picture of Kristy.

Here are the questions I would ask about this amendment, as I understand it. And I have not even had a chance to look at all of it, because it just came up on the floor.

If it was clear that the hospital personnel had acted intentionally or ''with conscious, flagrant disregard'' for Kristy's safety, do you think, I ask my colleagues, that $250,000 is enough to punish and deter the hospital personnel from doing it again?

Is $250,000 too much? And if my colleagues say it all depends on the history or the size of the hospital, then I would say that is precisely the point. It is a case-by-case situation. So why at the Federal level preempt this? Why take away from aggrieved citizens their right to seek redress for grievances within our court system?

Is $250,000 too much? And if you do not know the statistics, this does happen to citizens—80,000 deaths a year from negligence, 300,000 citizens hurt or injured a year. And we put caps on punitive damages?

Gina Barbaro. Gina had just turned 6 when she got sick with flu-like symptoms. Her mother took her to a chiropractor. Her symptoms at the time were headaches, fever, vomiting, shakes, delirium, rash on her foot, ear, knees, and down her legs. The chiropractor prescribed herbs and oils and sent Gina home.

By the way, we are not talking about the vast majority of doctors, chiropractors, you name it. We are talking about a few, sometimes, if you will, rotten apples in the basket.

The chiropractor prescribed herbs and oils and sent Gina home. The next day she was back with worsened conditions and severe redness to her right eye. The chiropractor, believing the problem stemmed from Gina's pancreas, sent her home again. Her temperature reached 105, and the color of the iris of her right eye changed.

Upon the third trip to the chiropractor, the chiropractor finally suggested that Gina go to the hospital for evaluation. The hospital staff determined Gina had a virulent strep infection that resulted in her losing the sight in her right eye. She also had numerous other complications. The eye had to be removed. A year and a half later, Gina continues to have continuing care, including cardiology, ophthalmology, infectious disease, and pediatrics.

I just showed you a picture of Gina, and now I ask the following questions: Assuming that the jury finds that the chiropractor's negligence in failing to send Gina to a hospital sooner was 70 percent responsible for her damages, and the negligence of the practice for which the chiropractor worked was 30 percent responsible because they hired the chiropractor in the first place. The jury awards Gina $100,000 in noneconomic damages for her pain and suffering and disability and fear.

If the chiropractor is unable to pay the full amount of his fair share, who should be stuck with the loss, Gina or the practice? And by the way, Mr. President, to go to one of the points that my colleague from Massachusetts, Senator KENNEDY, made, in the Labor and Human Resources Committee, one of the more important things we did to the medical malpractice amendment yesterday is that we had an opt-out provision.

In my State of Minnesota, we have struggled with this question of joint liability. I am not a lawyer, but I can see it is a really difficult question. The question: If you are not really responsible for the whole extent of the damage, and maybe only a small percentage because another party says they are insolvent, bankrupt or whatever, should you have to assume the whole cost? So we tried to work out different kinds of formulas at the State level.

This amendment preempts States from doing that. I am, in part, here to fight for my State. And by the way, Mr. President, it makes no sense whatsoever to me that if you are going to have a Federal preemption—and you should not—there are two issues: Why do we have a Federal preemption which, as I understand this amendment, goes in only one direction: States are preempted if they want to have stronger consumer protection than the norm we set here, but not preempted from having less consumer protection. Talk about a stacked deck. In any case, why would we not, as we did yesterday in committee, at least allow States to opt out of this?

This amendment professes to reform medical malpractice, but it is less about cutting back on the incidence of medical malpractice —how do we prevent this in the first place—than it is about making it harder for people to avoid becoming the victims of medical malpractice, making it more difficult for those victims to receive compensation for their injuries and making it easier for those who commit medical malpractice to get away with it.

This amendment is an attack on consumers. First and foremost—and I use the word ''attack'' carefully—it is an attack on the elderly and on families with children and on working Americans. Why else would this bill devalue compensation for low- and middle-income victims? That is right, this amendment says that when a person is hurt, it is their economic damages, usually including lost wages, that they have the best chance of getting back. But for noneconomic damages, it will be harder to get compensated. In other words, if your damages tend to be more in pain and suffering and less in lost wages, since you make less money, you are more likely to walk away with a smaller percentage of your compensation, and that is wrong if you have lost a child, or if you are infertile because of malpractice of a doctor, maybe an obstetrician. If you have been maimed, then I do not know why your loss is any less important than someone else's loss. Since when did we start making a calculation about justice based upon the income and wealth of families?

Mr. President, with regard to the second-degree amendment, lessening standards so that an obstetrician does not have to live up to the same standards by way of consumer protection, thus making it more possible to be able to deliver that kind of care in rural areas, makes no sense whatsoever.

I am from the State of Minnesota and greater Minnesota, rural Minnesota is an important part of our State. Minnesotans want to make sure that we have more doctors, nurses, advanced nurse practitioners in our communities delivering health care. But I do not believe the citizens in my State believe that the way to get that done is by moving away from consumer protection by lessening standards. People want affordable care, they want dignified care, they want humane care, and they want high-quality care.

Mr. President, yesterday in committee I offered an amendment, and I certainly will offer this amendment on the floor of the Senate. I did not believe we were actually going to have a medical malpractice amendment on the floor. I offered an amendment in markup that would have opened up the National Practitioner Data Bank—and for those who are now listening to this debate, I need to spell out what that is—granting consumers access to the same kind of information about their doctors that hospitals and HMO's currently receive.

In other words, if we are really interested in the problem of medical malpractice and we want to prevent it, that is really what people want to see happen, that is what doctors and chiropractors and nurses and nurse practitioners want to see happen, then one would think that consumers could have the same information, access to the same kind of information about their doctors that hospitals and HMO's currently receive. Eighty thousand people

die every year due to medical negligence, and consumers should have the right to know whether or not there has been a finding against the doctor because of malpractice or if a doctor has essentially been barred from practicing at a hospital or, for that matter, within a State. By the way, sometimes—and I could give examples—doctors move to other States, change their names, and then harm other citizens in the country, and those citizens have no way of finding out, unless they want to go all around the States in 50 different court systems. But that amendment was defeated yesterday. Once again, consumers lose and a variety of different powerful trade associations and their Washington lobbyists win. I will most definitely, Mr. President, offer that amendment on the floor.

Mr. President, the plaintiffs ask the question: Why the legislation? Why the legislation that essentially tips the scales of justice against us? Victims of malpractice do not know they are victims until they are injured. Perpetrators of malpractice know who they are. They have been sued before, and if they do it again, they can expect to be sued again. So they can walk the Halls of Congress in droves, but the victims—the people who will be affected by this amendment—do not even know who they are yet. We can only talk about them in the abstract, though I have tried to give specific examples.

Mr. President, I recognize that many of my colleagues feel they have to vote for something they can call tort reform, so they can go home and tell their constituents that they have struck a blow against the lawyers. But I urge them to see past this temptation to the real truth. They are striking a blow, if they support this second-degree or its underlying amendment, against their own constituents, against regular people who, God forbid, one day will be the victim of a bad doctor, bad drug, or defective product. If we pass these amendments, we will be hurting people, and that is not something that any of us were elected to do.

Mr. President, I have to say, on the health care front—and I have a few comments on this overall product liability bill as well—that it is amazing to me that we go through a health care debate for the better part of the last Congress and we have the General Accounting Office and the Congressional Budget Office and they talk about the trillion-dollar industry and how we can contain costs. As I remember the numbers, the cost of purchasing medical malpractice insurance, combined with defensive medicine—in other words, doctors say it is not just the cost of purchasing insurance—the total amounts to about 2 percent of the overall costs in the health care industry. Again, I, too, quote from a Business Week piece:

On an average, only one malpractice claim was filed for every 7.5 patients who suffered a negligent injury, and only half of these were ultimately paid. So, ''the legal system is paying just one malpractice claim for every 15 torts inflicted in hospitals.'' Those suffering nonnegligent injuries—that is, caused by care not yet deemed inappropriate—got nothing. Thus, the study concludes that rather than a surplus, there is a litigation deficit because so many injured people wind up uncompensated. So many injured people wind up uncompensated—overall, a very small percentage.

But let me shout this from the mountaintop that is the floor of the U.S. Senate: When the insurance industry moves into this debate and they want to get their way, they do quite well, apparently, given this kind of amendment. Last session we learned that the way you can most effectively contain health care costs would be to put some limit on what insurance companies charge. But nobody talks about that. That proposal is off of the table.

That is not what we want to do. We do not want to focus on containing health care costs in some kind of fair, rational way. We do not want to focus on how to cover children and women expecting children. We do not want to focus on how we can move forward on home-based long-term care so that elderly people, people with disabilities, can live at home in as near to normal circumstances as possible and with dignity. We do not want to talk about situations where young people, because they have diabetes or because they have had a bout with cancer, find they are no longer covered by an insurance company, or their rates are so high they cannot afford to purchase that insurance.

None of that is being done. We do not want to talk about the 40 million Americans that are uninsured. We do not want to talk about all of the American citizens in this country who are underinsured. We do not want to apply the standards we live by, where we have good coverage and make sure the citizens we represent get the same coverage.

No. Instead, we have an amendment here that is stacked in favor of large companies and against consumers, against regular people, against people who are injured, against people whose loved ones, in fact, in some cases have died as a result of medical malpractice; there is no way people can have information and knowledge about those doctors who have been found guilty of this kind of practice. No, we do not do that, nor do we take any effort to prevent it.

We do not do anything to protect the consumers. We move away from those standards and we have these caps on punitive damages; we say that when a child passes away, that is what she is worth. Not to mention the fact—and I hate to say this on the floor of the Senate because I admire the vast majority of the medical profession and, for that matter, the health care industry in this country—but, by golly, one of the ways you stop some of this practice by those who really have done irreparable harm to citizens, whether they be a doctor or a hospital or corporation, you name it, is you make sure that they know if there is a repeat of this, or they do it again, they will pay dearly.

Mr. President, yesterday I took part in an event that I only wish could have been witnessed by every one of my colleagues in the Senate. Had they seen it, I cannot believe that we would be here today on the floor of the Senate considering this underlying product liability bill, much less these amendments.

The event was a meeting of people who had been harmed by defective products and negligent doctors. All of these people have been claimants—the very people that this legislation is designed to protect against, the very people that these amendments are designed to protect against. They have all been through the legal process, and without its protections, they would not have gotten what compensation they did receive.

Do not let me hear people frame this debate as if it is a debate between everybody in the United States of America versus the trial lawyers. Not true. Having been through the process and seen how difficult it is to even get compensation today for their injuries and punish those who hurt them, these people yesterday—and they are here today as well—have an angry question for supporters of this so-called Product Liability Fairness Act: Why are we doing this? Why are we trying to make it harder for citizens who have been injured by products or malpractice, or citizens who have sometimes even been killed because of this, to seek redress of grievances in our court system?

These citizens I met with yesterday are not the ones with the money and sophistication. Rather, they are the ones that are taken advantage of. They are the ones that are hurt, the ones that wrongdoers try to force into unacceptable settlements. They were here yesterday bearing witness to the damage that could be wrought by manufacturers of defective products and negligent doctors.

They represent the downside of supporting this amendment. They are a reminder of why we have a civil justice system that has been called the great equalizer.

Why through this amendment and why through this underlying bill are we trying to move away from a court system that has been a great equalizer? It is especially so for citizens who have been hurt, for citizens who sometimes have died as a result of defective products or medical negligence.

Mr. President, in this underlying bill there are three basic provisions that have people up in arms. I agree with them 100 percent. Limiting punitive damages—which is part of this amendment as well—would have allowed corporations that hurt them to avoid punishment. It would have allowed industry to work them into what is called the death calculus. For those who were listening, that is the calculation by which a company can decide whether it

is economically worth it to keep marketing a product that harms consumers. It is where a company can ensure that the bottom line is the only line.

The cap on punitive damages in this bill also works to discriminate against lower- and middle-income plaintiffs. People—as I said before—like the elderly, children, and the vast majority of working Americans.

Under this bill, a manufacturers' egregious behavior will receive a lesser punishment if that behavior is against a person who makes less money and therefore has lower economic damages. Same with this amendment on medical malpractice. That is for exactly the same behavior, exactly the same harm and exactly the same defendant. This is an absurd result and it is an indefensible one.

Mr. President, let me take an example. Jack, a data entry clerk, is severely injured by the explosion of a defective diesel generator made by the Acme Generator Co., leaving him in a wheelchair for the rest of his life. His hospital bill is $40,000, but he misses out on 1 year of work, which amounts to $30,000 in lost wages. So his total economic damages are $70,000. The jury determines that Acme's behavior was egregious enough to merit $500,000 in punitive damages. But this bill operates to cap these damages at $250,000.

On the other hand, Bob, who sells commercial real estate, receives the identical injury when he uses one of Acme's generators. His hospital bill also amounts to $40,000 and he, too, is confined to a wheelchair for the rest of his life. When he misses a year of work it costs him $200,000. When the jury tries to punish Acme with $500,000 in punitive damages in his case, the punishment sticks.

This raises a good question: Why is it less punishable to hurt Jack? There is another good question. Was $250,000 enough to properly punish Acme?

I say to my colleagues again, it also applied to the amendment on medical malpractice where there is a cap set and it applies again. If a person does not know, if a person has followed these two examples and the answer is they do not know because a person needs more details, then that person has no business voting to support this one-size-fits-all underlying legislation or this one-size-fits-all amendment.

If the State of Minnesota and the State of Illinois have their own models and have attempted to deal with some of these tough problems so that we avoid some of the excessive litigation, so that we can figure out, I think, a really tough issue with joint liability, then we should let them do so.

We certainly should not have an amendment or a bill that represents a Federal preemption against State standards only if those standards protect consumers or are stronger on consumer protection. Lower consumer protection is fine. This is the inevitability of a stacked deck.

Mr. President, let me put a face on these questions. I want to make it clear I have thought long and hard about this. I feel so strongly that this debate has not dealt with people that I have sought permission for this, and I would not do it otherwise. Let me put a face on this.

Think of LeeAnn Gryc, from my State of Minnesota, who was 4 years old when the pajamas she was wearing ignited, leaving her with second- and third-degree burns over 20 percent of her body.

An official with the company that made the pajamas had written a memo 14 years earlier stating that because the material they used was so flammable, the company was ''sitting on a powder keg.'' When LeeAnn sued for damages, the jury determined that her economic damages were $8,500, and also awarded $1 million in punitive damages.

This is a picture of LeeAnn, what happened to her. Let me ask, was the jury wrong? Should the company have gotten away with only $250,000 in punitive damages, as this bill would have required? Unless a person is comfortable answering the question yes, a person should not be supporting this underlying bill.

Was this too great an award for this family? Unless a person is in favor of a cap and a person thinks more than $250,000 would be too much for this child and her family, a person should not support this bill.

This legislation will have a very, very, real negative impact on consumers. It is unconscionable.

Mr. President, when I saw the damage done by defective products to so many people as I did yesterday, I could not help but feel some of the pain they must have felt and still must be experiencing.

What is it like to be blinded, confined to a wheelchair, unable to parent a child, lose a child, live with brain damage? These are real and palatable harms that many plaintiffs in product liability and medical malpractice actions have to deal with. We should not pass amendments or legislation that provide them with less protection or restrict their ability to seek legitimate and fair redress for grievances in compensation for what has happened to them and to prevent it from happening again to others.

Historically, the primary goal of tort law was to compensate the victim, to make the victim whole. This reflects the view that it is better to have a wrongdoer who was partly responsible for the harm pay more than their fair share, if that is what is necessary to make sure that the victim is fully compensated.

It is not an easy choice, Mr. President, to require somebody to pay more than their fair share. This is an issue that I really struggle with. But it is a choice that this legislation seems to be willing to let stand.

If the harm is of a particular type, a type that can be shown in medical bills, lost wages, and other things that a person can get receipts for, that is one thing. But for noneconomic damages, like juries award for disfigurement, pain and suffering, and inability to bear children, the bill says that it is not important to make victims whole if that is the kind of damage they sustain. Two different standards between economic and noneconomic damages.

I would be very interested in why some of my colleagues think that people who suffer that kind of harm should be relegated to second-class status.

Mr. President, again, there are faces, there are real people who will be hurt by this legislation.

Think of Nancy Winkleman from Minnesota who was in a car crash. I met her a few weeks ago. Because a defective car underride bar failed to operate properly, the hood of her car went under the back of a truck and the passenger compartment came into direct contact with the rear end of the larger vehicle. Without the benefit of her car's own bumper to protect her, she was severely injured, losing part of her tongue and virtually all of her lower jaw.

Despite extensive reconstruction surgery, her face and her ability to speak will never be the same.

Real people, real faces. I cannot imagine the pain that Nancy must have undergone, or the pain that she undergoes every day. If one of the responsible parties in her case was unable to pay its fair share, should she go uncompensated for some of that pain? Or should the other responsible parties have to make it up? Unless you are certain that it is more important to protect those other responsible parties than to compensate Nancy for her pain, you should not support this bill. If you do, you will be hurting people, real people.

Finally, there is the statute of repose prohibiting suits to recover damages for harm caused by defective products that are over 20 years old. This is one of the most arbitrary and indefensible provisions of the bill. What possible justification is there for this? After all, if a product is defective and does not hurt anybody until it is over 20 years old, is the harm of the victim any less? Is the responsibility of the manufacturer any less?

Here is a face you can attach to these questions as you consider them. Think of Jimmy Hoscheit—with his permission—who was at work on his family farm when he was a boy. Jimmy, too is a Minnesotan. I met him a few weeks ago. He was using common farm machinery, consisting of a tractor, a mill, and a blower, all linked together with a power transfer system much like the drive train on a truck. The power of the tractor is transferred to the other equipment by way of a spinning shaft, a shaft covered by a freely spinning metal sleeve. The sleeve is on bearings so that if you were to grab the sleeve it

would stop moving while the shaft and side would continue to powerfully rotate at a very high speed.

Apparently when Jimmy leaned over the shaft to pick up a shovel, his jacket touched the sleeve and got caught on it. However, instead of spinning free of the internal shaft, the sleeve was somehow bound to the shaft, became wrapped in Jimmy's jacket and tore Jimmy's arms off. His father found him flat on his back on the other side of the shaft.

The manufacturer could have avoided all of this if it had just provided a simple and inexpensive chain to anchor the shaft to the tractor.

Now I ask you: Should Jimmy be able to bring a suit against the manufacturer? What if the product was over 20 years old?

A similar question can be asked about 6-year-old Katie Fritz, another Minnesotan whose family I was actually privileged to meet yesterday. Katie was killed in 1989 when a defective garage door opener failed to reverse direction, pinning her under the door and crushing the breath out of her.

I met the Fritz family yesterday, her mother Patty and her sons. It is a really courageous family. And it is really hard for them to talk about it. Patty Fritz had tears in her eyes—who would not? I am a father and a grandfather. Mr. President, you are a father. But you know Patty and her family have the courage to take what has happened to them and be able to speak out in behalf of others.

We all know how long some of these machines can last. If that garage door opener was over 20 years old, Katie's family could not have sued the manufacturer. There would not be any question of capping punitive damages or having joint liability for noneconomic damages they simply would not be allowed in the courthouse door.

That is what this legislation does. Explain to me the justice in that? What is the overriding public policy interest that is so important that this bill should shut Katie's family out of court, or other families like Katie's family, out of court? If you are not clear about this, if you are not sure that there is such a public policy interest here, you should not support this legislation.

This legislation and these amendments right now before us will hurt people, real people. To me, as I look at this legislation and I look at this amendment before us, this is not a close call. At a time when many in Congress are bent on cutting back on regulations that protect the health and safety of our citizens and on reducing public support for people if they get hurt and need help, the courts are the last resort. We cut back on the regulation, we cut back on the protection, we cut back on the ability of public agencies to protect people, and now we shut off the courts, the last resort. That is where regular people can try to deal with wealthy, sophisticated defendants on a relatively level playing field. And now what we are trying to do is change that and make it an unequal playing field. And even now it is extremely hard to get a reasonable settlement or award. Why are we considering legislation to make it even harder?

So I started out talking about the second-degree amendment. Then I talked about the McConnell amendment. Now I have talked about the underlying bill. I urge my colleagues from the bottom of my soul to please oppose not only these amendments, which I did not think would be on the floor, but this bill. Do not close your eyes. See the faces of the people the bill would hurt. See the faces of the people the bill would hurt. See their faces.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, once this second-degree amendment of my colleague from Wyoming is disposed of, it is my intention to offer an amendment to the underlying amendment offered by my colleague from Kentucky that will strike from that amendment the cap on punitive damages that amendment places on a specific area and that specific area is sexual assaults of patients by doctors.

Understandably this is a rarity, but the facts are that many times when punitive damages are awarded by juries against doctors, against medical providers, the juries do it in cases where there have been sexual assaults—a case where the patient has been put under anesthesia, the doctor then proceeds to sexually assault the patient. It is certainly a rarity. But, Mr. President, I cannot find any moral justification for this U.S. Congress saying to the 50 States, saying to the people across this country, in that particular case we deem it wise to impose our will on the States and to say, in the case of that sexual assault, there is going to be a cap, there is going to be a limit on what that jury can return in punitive damages against that particular individual.

I hope and would anticipate that this amendment will not be a controversial amendment, it will be something we can all agree on. But I wanted to notify my colleagues and Members in the Chamber that in a short period of time I do in fact intend to offer that particular second-degree amendment.

Mr. President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

Mr. President, I have sought recognition to comment briefly on the pending amendment offered on health care liability reform. I heard about it this morning at about 11:15. Today, like so many days in the Senate, is a very complicated day. Shortly we will be conducting hearings in the Judiciary Committee on terrorism, which I am due to chair. There is a ceremony starting in a few minutes on the steps of the Capitol to commemorate the victims of the Holocaust. But I wanted to come over for just a few minutes to comment about this pending amendment on health care liability reform.

My review so far has been cursory because of the limited time available, but it is my understanding that this amendment, which is a fairly thick document, is the bill which was reported out of the Labor and Human Resources Committee earlier this week. It is my thought that this legislative proposal now offered in the form of an amendment really warrants some very, very considerable study. It is being added onto the bill on product liability, which is already complex. The health care liability reform amendment is really a piece of legislation which I think requires a committee report, requires time to study and to reflect, and some judgment.

When we are dealing with the whole area of tort reform, we are building on a field which has had encrustations of judicial decisions over decades, or really centuries. As I said earlier this week in a brief statement on product liability, some reform, I think, is necessary. And in the practice of law, my profession, I have represented both plaintiffs and defendants in personal injury cases. But the reform process needs extraordinary care because the common law has developed one case at a time with very careful analysis, contrasted with the legislative process where frequently in hearings only one or two Senators may be present, and the markups, as carefully as we can do them, do not really produce the kind of legal and factual analysis which the courts have developed in the common law. But I do think there is room for improvement.

Last night, I spoke in favor of Senator BROWN's amendment to tighten up rule 11 to deter frivolous lawsuits. So there are places where we can improve the system with a very, very careful analysis. But I do not think it is realistic to take up this entire legislative package on health care liability reform with the kind of analysis which is required to protect the interest of all the parties, both plaintiffs and defendants.

As is the custom of the Senate under the rules of the Senate on the pending legislation of product liability, we have a different committee report which analyzes the hearings, sets forth the facts and conclusions that Senators may use as a basis for their consideration of the legislation, which we do not have on this amendment.

It would be my expectation that the managers would move to table. I have not consulted with them. But the Senator from West Virginia, Senator ROCKEFELLER, has commented about his interest at least in keeping the current legislation limited to product liability, and the distinguished Senator from Washington has commented about making sure that any amendment has

at least 60 votes so that we do not have legislation that will not stand the 60-vote rule on cloture.

I note that the majority leader has come to the floor. I shall be very brief.

I would like to put in the RECORD two studies of the malpractice field which I think would be of interest to my colleagues to review, and I will read just a couple of paragraphs which articulate the conclusions of these studies.

First, I refer to an article in the Annals of Internal Medicine of 1992 entitled ''The Influence of Standard of Care and Severity of Injury on the Resolution of Medical Malpractice Claims'' by a distinguished group of doctors.

Objective: To explore how frequently physicians lose medical malpractice cases despite providing standard care and to assess whether severity of patient injury influences the frequency of plaintiff payment.

This is a study of a ''total of 12,829 physicians involved in 8,231 closed malpractice cases.''

Under the conclusions section, the study essentially reports that, ''Our findings suggest that unjustified payments are probably uncommon.''

There is a fair amount to the analysis and a fair amount more to the conclusions. But I leave that for the readers in the CONGRESSIONAL RECORD.

I would next cite an article in the New England Journal of Medicine from July 25, 1991, captioned ''Relation Between Malpractice Claims and Adverse Events Due to Negligence'':

Abstract—Background and Methods. By matching the medical records of a random sample of 31,429 patients hospitalized in New York State in 1984 with statewide data on medical-malpractice claims, we identified patients who had filed claims against physicians and hospitals.

And the conclusion:

Medical-malpractice litigation infrequently compensates patients injured by medical negligence and rarely identifies, and holds providers accountable for, substandard care.

I would also like to put into the CONGRESSIONAL RECORD, Mr. President, an article from the New York Times of Sunday, March 5, which is particularly applicable to the second-degree amendment which has been filed here relating to obstetrics. This article reported on a study of New York hospitals with the captioned headline: ''New York's Public Hospitals Fail, and Babies Are the Victims.'' It is a fairly lengthy article. But a couple of paragraphs are worth quoting.

Each year, for the last decade, dozens of newborn babies have died or have been left to struggle with brain damage or other lifelong injuries because of mistakes made by inexperienced doctors, poorly supervised midwives and nurses in the teeming delivery rooms of New York City's public hospitals.

Some of the most prestigious medical schools and private hospitals are paid by the city to provide care in its sprawling hospital system. But an examination by the New York Times shows that many of these private institutions have left life-and-death decisions to overworked nurses and trainee doctors who are ill prepared to make them.

The effects can be seen across the system, from the surgical suites to the clinics. But nowhere are the consequences more devastating than in the delivery rooms where the course of a young life will be changed forever by a few minutes delay in the malfunctioning monitor or a lapse of attention.

Some hospital and city officials have known about the problem for years, and have worked mightily to keep them from the public. They fear a loss of public confidence and a flood of lawsuits.

Quoting further from the report:

These cases are catastrophic and costly. Many of these infants are now grown children suffering from multiple and severe disabilities who require lifetime hospitalization or intensive home care.

I would also cite a report by the Congressional Budget Office, the independent arm of Congress, and their conclusions in 1992:

Restructuring malpractice liability would not generate large savings in U.S. health care costs. Malpractice premiums amount to less than 1 percent of national health care expenditures. Thus, the premiums directly contribute little to the Nation's overall health care costs.

These are just a few comments, Mr. President, which I say I am abbreviating because the distinguished majority leader is on the floor. I have other commitments, having come over just when I heard the introduction of the amendment.

I ask unanimous consent at this point that the articles that I referred to from the New England Journal of Medicine, the Annals of Internal Medicine, and the New York Times be printed in the RECORD.

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

[From Annals of Internal Medicine, Vol. 117, No. 9, Nov. 1, 1992]

THE INFLUENCE OF STANDARD OF CARE AND SEVERITY OF INJURY ON THE RESOLUTION OF MEDICAL MALPRACTICE CLAIMS

(By Mark I. Taragin, MD, MPH; Laura R. Willett, MD; Adam P. Wilczek, BA; Richard Trout, PhD; and Jeffrey L. Carson, MD)

Objective; To explore how frequently physicians lose medical malpractice cases despite providing standard care and to assess whether severity of patient injury influences the frequency of plaintiff payment.

Design: Retrospective cohort study.

Setting: Physicians from the state of New Jersey insured by one insurance company from 1977 to 1992.

Participants: A total of 12,829 physicians involved in 8231 closed malpractice cases.

Measurement; Physician care and claim severity were prospectively determined by the insurance company using a standard process.

Result: Physicians care was considered defensible in 62% of the cases and indefensible in 25% of the cases, in almost half of which the physician admitted error. In the remaining 13% of cases, it was unclear whether physician care was defensible. the plaintiff received a payment in 43% of all cases. Payment was made 21% of the time if physician care was considered defensible, 91% if considered indefensible, and 59% if considered unclear. The severity of the injury was classified as low, medium, or high in 28%, 47%, and 25% of the cases, respectively. Severity of injury had a small but significant association ($P < 0.001$) with the frequency of plaintiff payment (low severity, 39%; medium severity, 42%; and high severity, 47%). The severity of injury was not associated with the payment rate in cases resolved by a jury (low severity, 23% medium severity, 25%; and high severity, 23%).

Conclusions: In malpractice cases, physicians provide care that in usually defensible. The defensibility of the case and not the severity of patient injury predominantly influences whether any payment is made. Even in cases that require a jury verdict, the severity of patient injury has little effect on whether any payment is made. Our findings suggest that unjustified payments are probably uncommon.

The fear of medical malpractice has resulted in significant physician dissatisfaction and has contributed to the decrease in the number of persons entering the field of medicine (1, 2). Further, physicians have stimulated legislation for tort reform, increased the practice of defensive medicine, and avoided ''risky'' patients (3–7).

Physicians' apprehensions about malpractice stem from several perceptions (7). Perhaps foremost is the concern that the malpractice resolution process is unfair (8). Because standards are unclear and possibly inconsistent, physicians are afraid of being sued and of losing the case despite their having provided standard medical care (9). Further, juries are seen as unjustifiably rewarding patients solely on account of the severity of their injuries.

We explored the influence of physician care and the severity of patient injury on the malpractice process. Contrary to many perceptions, our study suggests that physicians usually win cases in which physician care was deemed to meet community standards and that the severity of patient injury has little bearing on whether a physician loses a case.

METHODS

Data source

We obtained our data from The New Jersey medical Inter-Insurance Exchange, a physician-owned insurance company. This company insures approximately 60% of the physicians in New Jersey. Since 1977, demographic information on physicians and detailed descriptive information on every malpractice claim have been entered into a standardized computer data-base.

Study design and population

We did a retrospective cohort study that included physicians insured for any time between 1977 and 1992. During this period, 12,829 physicians were insured and 11,934 cases were filed, of which 80% are currently closed. Because the time from an incident until its resolution can vary greatly, we chose 1 January 1986 as a cutoff point for the incident data because 96% of cases that occurred before this date were closed by 1992. After excluding 14 cases that lacked peer review results, we evaluated 8,231 closed cases.

Study variables

The insurance company's assessment of whether a physician's actions represent standard medical care is based on medical criteria and is not supposed to be influenced by legal concerns. First, the physician is contacted, and if he or she admits error, the case is labeled ''indefensible—insured admits deviation,'' and no further review is done. Otherwise, the case is reviewed by a claims representative employed by the insurance company. If the physician's performance is thought to be clearly medically defensible, the case is labeled ''no peer review, clearly defensible.'' Otherwise, a peer review process ensues in which a physician from the same specialty is chosen from volunteer physicians, many of whom have performed this

service regularly for several years. This physician-reviewer then participates in a discussion of the case with the claims representative, the defense attorney, and the defending physician or physicians. Based on the standard of medical care currently practiced by physicians of similar training and experience in the community, the physician-reviewer classifies the claim as ''defensible'' if standard care was provided, ''indefensible'' if not, and ''defensibility unclear'' if the reviewer is unsure. A slight variance to this standard procedure occurs for neurosurgery and orthopedics cases because, historically, experts hold divergent opinions about the appropriate approach to some routine problems. Therefore, a panel of physicians is used instead of one physician-reviewer, and the majority vote is considered final. For every case, we summarized this process of the assessment of physician care as defensible, indefensible, or unclear.

If a plaintiff receives financial compensation through either a settlement or a jury verdict, the terminology ''payment'' is applied. For the subset of payments resulting from a jury verdict, the term ''award'' is used. We created four categories of payment: less than $10,000; $10,000 to $49,999; $50,000 to $199,999; and $200,000 or more. All dollar amounts are adjusted to represent 1990 dollars.

The insurance company classifies the severity of the patient's injury using the industry standard National Association of Insurance Commissioners Index (10). This index has nine categories of increasing severity. We collapsed this into three categories: low (no injury, minor injury with no disability, or minor injury with temporary disability); medium (major injury with temporary disability, minor injury with moderate disability, or major injury with moderate disability); and high (grave injury with moderate disability, brain injury with impaired life expectancy, or death).

The stage of resolution is the point in the legal process at which the case is resolved. A case is created when the insurance company is notified of a plaintiff's claim of damages. A suit occurs when this complaint is filed with the court. Discovery refers to the process by which lawyers collect information about the case.

Statistical analysis

Statistical significance was assessed by chi-square tests as appropriate (11).

RESULTS

The characteristics of the 8231 closed cases are summarized in Table 1. Physician care was considered defensible in 62% of the cases and indefensible in 25%. In almost half of the latter cases, the physician admitted error. The remaining 13% of cases were unclear as to defensibility. Payment was made in 43% of all cases, with 52% for less than $50,000 and only 15% for greater than $200,000. The median payment was $45,551 (range, $24 to $3,965,000). The severity of the injury was classified as low in 28% of cases, medium in 47%, and high in 25%.

TABLE 1.—MEDICAL MALPRACTICE CLAIM FACTORS

Factor	Closed Cases (n = 8231)
	n(%)
Physician care:	
Defensible	5132 (62)
No peer review, clearly defensible	2378 (29)
Insured found defensible by peer review	2754 (33)
Indefensible	2000 (25)
No peer review held, insured admits deviation	881 (11)
Indefensible (breach of standard)	1119 (14)
Unclear	1099 (13)
Payment:	
No	4730 (57)
Yes	3515 (43)
<$10,000	744 (21)
$10,000 to <$50,000	1089 (31)
$50,000 to <$200,000	1141 (33)
$200,000 or more	541 (15)
Severity of injury:	
Low (no injury or minor injury with no or temporary disability)	2334 (28)
Medium (minor or major injury with moderate disability or major injury with temporary disability)	3824 (47)
High (grave injury, brain injury, or death)	2087 (25)

Physician care

Evaluation of physician care correlated closely with the likelihood of financial payment. A payment was made in 21% of the cases considered defensible, in 91% of the cases considered indefensible, and in 59% of the cases considered unclear. The amount was not directly related to judgments of defensibility (P = 0.16 [for linear trend]).

Most cases closed early in the process (Fig. 1 not reproducible in RECORD); 67% were closed before discovery was completed. Only one quarter of the 12% of cases requiring a jury verdict resulted in payment to the plaintiff. Of these awards, the median payment was $114,170 (range, $3281 to $2,576,377). For each stage, the percent of cases that resulted in payment strongly correlated with physician care (P < 0.001). For example, in those cases that closed before a suit was filed, payment was made to the plaintiff in 6% of defensible cases, in 69% of cases in which physician care was deemed unclear, and in 93% of indefensible cases. In addition, physician care influenced the stage of resolution. A jury verdict was required for 15% of defensible cases, for 10% of cases in which defensibility was unclear, but in only 5% of indefensible cases (P < 0.001 [for linear trend]). Even in the 12% of cases that required a jury verdict, physician care correlated with the likelihood of a jury award: 21% if defensible, 30% if unclear, and 42% if indefensible (P < 0.001 [for linear trend]).

Severity of injury

The influence of the severity of the claimant's injury on the resolution process is summarized in Table 2. A similar distribution of physician care was seen in every severity category. The likelihood of obtaining any payment showed a small (<8% difference between low and high claim severity) but statistically significant (P < 0.001) trend toward an association between increasing severity and the likelihood of payment. These findings remained consistent when all nine severity-of-injury levels were analyzed.

TABLE 2.—RELATION BETWEEN SEVERITY OF INJURY AND PHYSICIAN CARE, PAYMENT, AND STAGE OF RESOLUTION

Variable	Severity of injury		
	Low (n = 2326)	Medium (n = 3820)	High n = 2085)
	n (%)		
Physician care:			
Defensible	1407 (61)	2456 (64)	1269 (61)
Indefensible	525 (23)	907 (24)	568 (27)
Unclear	394 (17)	457 (12)	248 (12)
Payment:			
No	1420 (61)	2186 (57)	1111 (53)
Yes	906 (39)	1634 (43)	974 (47)
< $10,000	521 (70)	181 (24)	41 (6)
$10,000 to < $50,000	276 (25)	534 (58)	179 (16)
$50,000 to < $200,000	97 (9)	637 (56)	407 (36)
$200,000 or more	12 (2)	182 (34)	347 (64)
State of resolution:			
Before suit filed	891 (38)	544 (14)	219 (11)
After suit, before discovery complete	930 (40)	1927 (50)	1005 (48)
After discovery, more than 45 days before trial	80 (3)	189 (5)	142 (7)
Within 45 days of trial	140 (6)	395 (10)	238 (11)
During trial, before verdict	102 (4)	270 (7)	186 (9)
Verdict or after	183 (8)	497 (13)	296 (14)

The amount of payment correlated closely with the severity of the injury. The median payments for injuries of low, medium, and high severity were $7,189, $50,000, and $115,089, respectively. These findings also remained consistent when all nine severity-of-injury levels were analyzed, except in the case of death. In cases of death, the median payment was $94,346, whereas for the remaining high-severity injuries, the median payment was $210,807.

In contrast to the overall findings, in cases requiring a jury verdict, the severity of injury was not related to the likelihood of payment (P>0.2). However, the severity of the injury did correlate with the payment amount (P=0.03) (Table 3).

TABLE 3.—CASES REQUIRING A VERDICT: RELATION OF PHYSICIAN CARE AND INJURY SEVERITY TO FINAL AWARD STATUS

Variable	n(%)			Payment				
	Award							
	No (n=740)	Yes (n=236)	Total	< $10,000	$10,000 to < $50,000	$50,000 to < $200,000	$200,000 or more	Total
Physician care:								
Defensible	605 (79)	161 (21)	766 (100)	8 (5)	33 (20)	62 (39)	58 (36)	161 (100)
Indefensible	59 (58)	42 (42)	101 (100)	0 (0)	8 (19)	13 (31)	21 (50)	42 (100)
Unclear	76 (70)	33 (30)	109 (100)	2 (6)	8 (24)	11 (33)	12 (36)	33 (100)
Severity:								
Low	141 (77)	42 (23)	183 (100)	3 (7)	15 (36)	16 (38)	8 (19)	42 (100)
Medium	372 (75)	125 (25)	497 (100)	5 (4)	24 (19)	52 (42)	44 (35)	125 (100)
High	227 (77)	69 (23)	296 (100)	2 (3)	10 (14)	18 (26)	39 (57)	69 (100)

DISCUSSION

In most of the malpractice cases included in our analysis, a physician was judged to have provided medical care that was defensible, and the plaintiff did not receive any payment. Although physician care strongly influenced the overall process, the severity of the patient injury had little effect on the probability of any payment. Most cases closed at an early state, so a jury verdict was rarely needed. For the small number of cases that required a jury verdict, only 24% resulted in payment to the plaintiff and the severity of injury did not influence the probability of payment.

The determination of physician care was a good predictor of the outcome of a case. For the cases that were felt to be indefensible, the payment rate was 91%. This high payment rate is expected because the insurance

company uses the determination of physician care to decide whether to offer to settle a case. In contrast, in the cases where physician care was classified as defensible, the payment rate was 21%.

Several factors may explain why payment occurred in cases class classified as defensible. First, the determination about physician care was made very early after a claim was generated and may have been inaccurate as more information became available. Second, a physician-based review process may be biased toward assessing physician performance in the physician's favor. Third, the insurance company may err toward an initial determination of physician care as defensible to avoid unnecessary payments. The possibility that new information rendered the original assessment of defensibility incorrect was supported by the fact that 68% of defensible cases that resulted in payment were settled before trial, in half of these before discovery was complete. Further, only 15% of defensible cases that resulted in payment represented awards made to the plaintiff by a jury. In addition, because the physician has the right to refuse to settle and the insurance company is physician-owned, many of the defensible cases that resulted in payment were probably misclassified as defensible. Therefore, although we can only speculate on the number of cases that were inappropriately lost by the physician, our data suggest that inappropriate payments are probably uncommon.

Severity of injury

Although the findings of previous studies are inconsistent (7, 8, 12, 13), we found that the severity of patient injury had little influence on the probability of plaintiff payment. We anticipated that a jury would be more likely to rule in favor of the plaintiff if the patient had a more severe injury. Similarly, we expected that the plaintiff's attorney might negotiate a payment for the plaintiff more frequently in cases in which injury was of higher severity than those in which injury was of lower severity.

We also found that the assessment of the standard of care by a peer review panel was not related to the severity of injury. This finding differs from that of a recent study, which found that the patient's outcome strongly influenced reviewers' opinions of the appropriateness of care (14). The contradictory findings may reflect the fact that the physician-reviewers in that study had only abstracted data of selected cases. In our study, the malpractice cases were judged during the actual processing of the case, with the medical records available for review and with the treating physician available for additional insight.

We suspect that our results can be generalized even though our study was done in a subset of physicians from one state. In a previous study, we found that the demographic characteristics of the physicians in our database were similar to the overall population of physicians in New Jersey and varied only slightly from national figures (10, 15, 16). In addition, the frequency of payment, average amount of payment, severity of injury, stage of resolution, and proportion of claims involving only one physician are consistent with the findings of other studies (10, 13, 17). Thus, despite the implicit nature of judgments about defensibility, our results should be generalizable to other physician-patient populations.

These results have implications for tort reform. This insurance company felt liability was unclear for only 13% of cases, and a jury verdict was required for only 12% of all cases. This suggests that much of the efforts in the malpractice process involves determining the facts of the case and negotiating the amount of settlement rather than resolving disagreements about the presence of liability. Neither the patient nor the physician is served by this extremely inefficient and costly process, which results in delayed payments to injured parties and casts a prolonged cloud over physicians. Our experience in determining physician defensibility suggests that arbitration panels may be successful in assessing liability. Unfortunately, our data shed little light on the costs and benefits of a ''no-fault'' system because most injuries do not enter the current malpractice resolution process (18).

In summary, our analyses suggest that, in malpractice cases, the physician's care is usually defensible and that the plaintiff usually does not receive any payment. The severity of patient injury affects the payment amount but has little influence on whether monetary damages are received by a plaintiff, especially in cases that are decided by a jury. Further efforts to clarify the frequency of unjustified payments are needed, but our data suggest that such payments are uncommon.

Acknowledgments: The authors thank Sharona Shapiro, MPA, and Susan Jacobs, PhD, for review of the manuscript; and Leona Stern for manuscript preparation.

Requests for Reprints: Mark I. Taragin, MD, MPH, University of Medicine & Dentistry of New Jersey, Robert Wood Johnson Medical School, Division of General Internal Medicine, 97 Paterson Street, New Brunswick, NJ 08903–0019.

Current Author Addresses: Drs. Taragin, Willett, and Carson: Division of General Internal Medicine, Department of Medicine, University of Medicine & Dentistry of New Jersey, Robert Wood Johnson Medical School, 97 Paterson Street, New Brunswick, NJ 08903–0019.

Mr. Wilczek: Medical Inter-Insurance Exchange, 2 Princess Road, Lawrenceville, NJ 08648.

Dr. Trout: Statistics Department, Cook College, P.O. Box 231, New Brunswick, NJ 08903.

REFERENCES

1. Lewis CE, Prout DM, Chalmers EP, Leake B. How satisfying is the practice of internal medicine? A national survey. Ann Intern Med. 1991;114:1–5.

2. Charles SC, Wilbert JR, Franke KJ. Sued and nonsued physicians' self-reported reactions to malpractice litigation. Am J Psychiatry. 1985;142:437–40.

3. Boggs JS. Florida neurosurgical lawsuit profile—1987. J Florida Med Assoc. 1987;74:767–73.

4. Weiss BD. The effect of malpractice insurance costs on family physicians' hospital practices. J Fam Pract. 1986;23:55–8.

5. Samuel FE. Liability threat slows progress of medical technology. Charlotte Observer. In: U.S. Senate. Congressional Record, 18 September 1986;s12923.

6. American Medical Association/National Medical Specialty Society Coordination Project on Professional Liability. The Continuing Need for Legislative Reform of the Medical Liability System. Chicago: AMA; February 1987.

7. U.S. General Accounting Office. Medical malpractice: no agreement on the problems or solutions. Washington, DC: General Accounting Office; 1986: Publication no. GAO/HRD 86–50.

8. Cheney FW, Posner K, Caplan R, Ward RJ. Standard of care and anesthesia liability. JAMA. 1989;261:1599–603.

9. Medicine by the book. American Medical News. 6 Jan 1989.

10. U.S. General Accounting Office. Medical malpractice: characteristics of claims closed in 1984. Washington, DC: General Accounting Office; 1987. Publication no. GAO/HRD 87–55.

11. Schlesselman J. Case-Control Studies. New York: Oxford University Press; 1982.

12. Bovbjerg RR, Tancredi LR, Gaylin DS. Obstetrics and malpractice. Evidence on the performance of a selective no-fault system. JAMA. 1991;265:2836–43.

13. Sloan FA, Hsieh CR. Variability in medical malpractice payments: is the compensation fair? Law and Society Review. 1990;24:997–1039.

14. Caplan RA, Posner KL, Cheney FW. Effect of outcome on physician judgements of appropriateness of care. JAMA. 1991;265:1957–60.

15. Taragin MI, Carson JL, Wilczek AP, Karns ME, Trout JR. Physician demographics and the risk of medical malpractice. Am J Med. 1992;93[In press].

16. American Medical Association. Physician Characteristics and Distribution. Chicago: Department of Data Release Services, Division of Survey and Data Resources; 1984.

17. U.S. General Accounting Office. Medical malpractice: six state case studies show claims and insurance costs still rise despite reforms. Washington, DC: General Accounting Office; 1987. Publication no. GAO/HRD 87–21.

18. Localio AR, Lawthers AG, Brennan TA, Laird NM, Hebert LE, Peterson LM, et al. Relation between malpractice claims and adverse events due to negligence. N Engl J Med. 1991;325:245–51.

[From the New England Journal of Medicine, Vol. 325, No. 4, July 25, 1991]

RELATION BETWEEN MALPRACTICE CLAIMS AND ADVERSE EVENTS DUE TO NEGLIGENCE—RESULTS OF THE HARVARD MEDICAL PRACTICE STUDY III

(By A. Russell Localio, J.D., M.P.H., M.S., Ann G. Lawthers, Sc.D., Troyen A. Brennan, M.D., J.D., M.P.H., Nan M. Laird, Ph.D., Liesi E. Hebert, Sc.D., Lynn M. Peterson, M.D., Joseph P. Newhouse, Ph.D., Paul C. Weiler, LL.M., and Howard H. Hiatt, M.D.)

Abstract Background and Methods. By matching the medical records of a random sample of 31,429 patients hospitalized in New York State in 1984 with statewide data on medical-malpractice claims, we identified patients who had filed claims against physicians and hospitals. These results were then compared with our findings, based on a review of the same medical records, regarding the incidence of injuries to patients caused by medical management (adverse events).

Results. We identified 47 malpractice claims among 30,195 patients' records located on our initial visits to the hospitals, and 4 claims among 580 additional records located during follow-up visits. The overall rate of claims per discharge (weighted) was 0.13 percent (95 percent confidence interval, 0.076 to 0.18 percent). Of the 280 patients who had adverse events caused by medical negligence as defined by the study protocol, 8 filed malpractice claims (weighted rate, 1.53 percent; 95 percent confidence interval, 0 to 3.2 percent). By contrast, our estimate of the statewide ratio of adverse events caused by negligence (27,179) to malpractice claims (3570) is 7.6 to 1. This relative frequency overstates the chances that a negligent adverse event will produce a claim, however, because most of the events for which claims were made in the sample did not meet our definition of adverse events due to negligence.

Conclusions. Medical-malpractice litigation infrequently compensates patients injured by medical negligence and rarely identifies, and holds providers accountable for, substandard care. (N Engl J Med 1991; 325:245–51.)

The frequency of malpractice claims among patients injured by medical negligence has been the subject of much speculation and little empirical investigation. Two fundamental questions about malpractice litigation have been how well it compensates patients who are actually harmed by medical negligence, and whether it promotes quality and penalizes substandard care. If negligent medical care infrequently leads to professional censure or a malpractice claim, then the deterrence of substandard care may be suboptimal[1,2] and the civil justice system will compensate few patients for their medical injuries.[3] If, as some allege,[4] sizable numbers of malpractice claims are filed for medical care that is not negligent, then the costs of claims may be excessive, and the credibility and legitimacy of malpractice litigation as a means of obtaining civil justice may be reduced.

Footnotes at end of article.

Danzon[5] estimated on the basis of reviews of medical records and claims data from California in the mid-1970's[6] that for each malpractice claim, 10 injuries were caused by negligent care. That study estimated only the relative frequency of claims and negligence; without a method of determining the fraction of claims that did not involve negligence, Danzon could not estimate the probability that a claim would follow medical negligence.

To calculate this probability, the Harvard Medical Practice Study linked clinical reviews of 30,195 inpatient records with statewide records of malpractice claims. Linking these two data sets permitted a determination of the frequency with which negligent and nonnegligent medical care, as evaluated by a team of physician-reviewers, led to malpractice claims.

METHODS

Data from medical records

Our review of the records of a random sample of 31,429 patients discharged in 1984, drawn from 51 hospitals across New York State, is described in detail elsewhere.[7] In brief, the review proceeded in three stages.

In the first stage, a group of specially trained nurses and medical-records administrators used standard protocols to screen records for at least 1 of 18 events signaling a possible adverse event.

In the second stage, medical records that met at least 1 of these 18 criteria were referred to two physicians who independently evaluated the cause of the patient's injury and whether there had been negligence. The physicians first decided whether the patient had suffered an injury caused at least in part by medical management. Injuries that either prolonged hospitalization or led to disabilities that continued after discharge were deemed to be adverse events. Negligence was considered to have occurred if the medical care that caused the adverse event was below the expected level of performance of the average practitioner who treated problems such as the patient's at that time.

Physicians recorded their judgments about causation and negligence on an ordered, categorical scale ranging from ''no possible adverse event (or negligence)'' to ''virtually certain evidence of an adverse event (or negligence).'' Reviewers also judged the degree of disability resulting from the adverse event and described briefly the nature of the injury, its relation to medical management, and the negligent act or omission.

In the third stage, when the two physicians disagreed on the existence or description of an adverse event, the discrepancy was resolved by a supervising physician who was blinded to their decisions and made his or her own judgment about causation and negligence.

Injuries were classified as adverse events, and then as negligent, when the average of the two final physicians' evaluations represented a judgment of at least ''more likely than not.'' Multiple reviews permitted the analysis of results under alternative assumptions about thresholds for identifying causation and negligence.

The record review produced five groups of cases: (1) cases that met no screening criteria for adverse events or negligence, (2) those referred for review by the physicians but without evidence of an adverse event, (3) cases of ''low-threshold adverse events'' with judgments of causation that were borderline or lower, (4) cases of adverse events with no evidence of negligence, and (5) cases of adverse events due to negligence.

We performed sensitivity analyses to identify possible biases due to missing records or misclassified reviews. To assess the effect of false negative findings in the stage 1 screening by medical-records administrators, we conducted a second review of a random sample of 1 percent of all the records located.[7] A second team of physicians independently reviewed 318 records from two hospitals to assess the reliability of the initial physicians' reviews.[8]

Several months after the initial visits, the participating hospitals searched against for missing records and explained why some charts remained unavailable. At six randomly selected facilities, our medical-review team conducted another three-stage review to determine whether adverse events were more likely to have occurred when records were missing. At the remaining hospitals, the medical-records administrators referred for physician review only cases for which there was evidence of legal action in the patients' charts. At all hospitals, we obtained identifying data on patients for later use in matching the records with data on malpractice claims.

Data on malpractice claims

The data on malpractice claims included all formal claims filed against physicians and hospitals and reported to the Office of Professional Medical Conduct (OPMC) at the New York Department of Health. The data base at the OPMC lists claims according to the defendant, not the patient making the claim. We have referred to each claim in the OPMC records as a ''provider claim.'' Because one patient could sue several defendants for a single injury, the number of defendants exceeded the number of patients. We have referred to counts of claims by patients as number of ''patient claims.''

New York statutes and regulations require regular reporting of claims by domestic and out-of-state insurance carriers,[9] self-insurance programs,[10–12] and all hospitals.[13] Both the Insurance Department and the Department of Health formally advised all insurance and health care organizations about the needs of our study and about the reporting mandates.[14] The OPMC allowed us complete access to all computer files and paper abstracts. The OPMC data base, which contained 67,900 provider claims reported from 1975 through May 1989, became our starting point for estimating patient claims, computing lengths of time between injuries and claims, determining the chances that payment would result from a claim, identifying claimants in the sample, and linking their claims to the sampled patients' hospital records. When necessary, members of the study team contacted and visited individual hospitals to supplement the OPMC data with more comprehensive information.

To test the robustness (resistance to errors in assumptions) of the estimate of the frequency of claims, we calculated the number of patient claims for 1984 in three ways. First, we summed the case-sampling weights (the population of patients represented by each sampled record) of the claims linked to medical records through the matching process described below and extrapolated from the sample to the New York State population. Second, we calculated the number of patient claims from the OPMC's statewide records for injuries that occurred in 1984, regardless of when the patient filed the claim. Third, we estimated the annual frequency of patient claims by averaging the number of claims filed by year from 1984 through 1986. Averse events discovered in 1984 would probably have been reflected, if at all, in malpractice claims filed during this period.

Matching process

Our study protocol precluded interviews with patients about malpractice claims. Claimants were identified by linking their hospital records to OPMC claims records. This linkage proceeded only after the completion of the review of medical records. Physician-reviewers were unaware of the existence of a claim unless the medical record mentioned it.

We used both computer-based and manual matching techniques to link the records of patients in the sample to malpractice claims. Identifying characteristics for linking patients to claimants included the patient's name, address, ZIP Code, social security number, and age, the geographic location where the injury occurred, and the hospital from which he or she was discharged. Lack of complete data on the identifiers with strong discriminating power such as the social security number forced us to rely on a combination of matching characteristics. The matching algorithm, described in detail elsewhere,[7] allowed for errors of differences in the spelling of names, so that actual matches were erroneously excluded.[15] Manual matching, a common step in record-linkage procedures,[16] helped to confirm links because of the amount of descriptive information not in machine-readable format. The OPMC requested additional descriptive data from the insurers to assist us in confirming or ruling out matches.

After identifying the sampled patients who had filed claims, we considered whether their allegations of malpractice referred to the medical care delivered or discovered in the sampled hospitalization. A team consisting of an attorney experienced with malpractice data, a health services researcher, and a physician-lawyer compared clinical information from the review of medical records with coded data and summary descriptions from the OPMC claims records. This team rated by consensus its degree of confidence in the match by first eliminating cases for which the group was confident that no match existed and those that lacked sufficient information to permit a judgment. For all other cases, the team's degree of confidence in the match was rated on a six-point confidence scale (Table 2).

Estimates of statewide rates of adverse events and claims

The medical-record-sampling design permitted us to extrapolate from the sample to the population of all patients discharged from hospitals in New York State in 1984. The analysis of the cases that produced claims required separate adjustments sampling weights to account for missing records. These adjustments assumed that the rate of claims among the patients whose hospital records were never found equaled the rate among those whose records were initially not located but were found on follow-up. The standard errors of rates of claims account for the effects of a stratified, unequal-cluster sampling design.''

RESULTS

Adverse events and adverse events due to negligence

As we reported in detail earlier,[8] the three-stage review of medical records detected 1133 adverse events (after adjustment for double counting of the same hospitalizations). Two hundred eighty adverse events, representing 1 percent of all discharges (95 percent confidence interval, 0.8 to 1.2 percent), were judged to have been caused by negligence (Table 1).

TABLE 1.—RESULTS OF THE REVIEW OF A SAMPLE OF 31,429 MEDICAL RECORDS FROM NEW YORK STATE, 1984 [1]

Category	Number of records	Comments
Sample selected	31,429	Random sample from 51 hospitals.
Records not located on initial visit.	1,234	
Records screened for possible AE (first stage).	30,195	
Records referred for physician review after screening.	7,817	Satisfied 1 or more of 18 screening criteria.
Reviewed by physicians for presence of AE and neglience (second stage).	[2] 7,743	Two physicians judged the likelihood of AE and neglience indepenently.
Reviewed by a third physician to resolve disagreement (third stage).	1,808	Third review provided majority opinion.
AE's identified	1,133	Majority of reviewers' combined confidence level at least ''more likely than not'' (adjusted for incidence).
AE's due to negligence identified.	280	Majority found AE caused by negligence with confidence level at least ''more likely than not'' (adjusted for incidence).

[1] AE denotes adverse event.

[2] Seventy-four of the 7817 records referred for review in stage 2 were not reviewed. Case-sampling weights were reallocated among the 7743 cases actually reviewed.

Analysis of Matched Records

Ninety-eight patients in the sample filed claims against 151 health care providers (Table 2). Not all these patients alleged malpractice during the episodes of care covered by the study. When we considered only matches designated ''more like than not,'' we linked 47 of these malpractice claims to the sampled hospitalizations. These 47 cases represent a rate of malpractice claims per discharge in New York State of 0.11 percent (95 percent confidence interval, 0.06 to 0.16 percent).

TABLE 2.—RESULTS OF MATCHING MALPRACTICE CLAIMS TO HOSPITALIZATIONS IN NEW YORK STATE, 1984 [1]

Decision on Matching (Confidence Score)	Number	Percent
Claimants in sample	98	
Medical records reviewed	[2] 30,121	
Claimants linked to sampled hospitalizations:		
Virtually certain (6)	41	41.8
Strong evidence (5)	2	2.0
More than likely (4)	4	4.1
Subtotal	47	
Claimants in sample but not linked to sampled hospitalizations:		
Not quite likely (3)	1	1.0
Slight-to-modest evidence (2)	0	0.0
Little evidence (1)	1	1.0
Definite nonmatch	44	44.9
Insufficient data	4	4.1
AE discovered after discharge [3]	1	1.0
Subtotal	51	

[1] AE denotes adverse event. Because of rounding, percentages do not total 100.

[2] Seventy-four of 30.195 records located were not reviewed. None of the cases involved claimants. Case-sampling weights have been reallocated among the usable observations.

[3] AEs that occurred during the sampled hospitalization and were discovered after discharge have been omitted.

In most cases, the reviewing team's judgments went clearly for or against linking the claim to a sampled hospitalization. For example, in 30 of the 44 cases in which there was considered to be no possible match, the main reason was a mismatch between the date of the injury or the date when the claim was filed and the date of the sampled hospitalization. In the four cases for which there were insufficient data, we chose to vote against linkage rather than guess. None of these cases involved adverse events. Another matched case did not qualify for inclusion according to the sampling design because the adverse event was discovered after the sampled hospitalization, rather than before or during it.[7]

Table 3 shows the distribution of malpractice claims according to the five groups of cases defined by the outcome of the medical-record review. The percentage of claimants in each subgroup increased as the findings of the reviewers increased in severity from ''no screening criteria met'' to ''adverse events caused by negligence.'' For all outcomes groups, the rate of malpractice claims was low. The chance that an injury caused by medical negligence would result in litigation was 1.53 percent (95 percent confidence interval, 0 to 3.24 percent).

TABLE 3.—RATE OF PATIENT MALPRACTICE CLAIMS IN THE SAMPLE OF 30,121 MEDICAL RECORDS FROM NEW YORK STATE, 1984 [1]

Group of Records	Number of Discharges in Sample	Number of Claimants in Sample	Estimated Number of Claimants in new York	Estimated Rate of Claims per Discharge (95% CI) [2]	Comments
Cases not referred by MRA	22.378	12	899	0.045 (—)	5 Cases: alleged failure to diagnose during outpatient visit.
Cases referred: no possibility of AE	6,275	14	1,000	0.18 (—)	9 Cases: physician-reviewers knew about claim, found no AE. 4 Cases: disagreement settled by third reviewer.
Low-threshold AEs (less than likely)	335	3	92	0.30 (—)	1 Case: one of two reviewers found negligence.
AEs (more than likely) not caused by negligence	853	10	561	0.79 (—)	6 Cases: one of two reviewers found negligence.
AEs (more than likely) caused by negligence	280	8	415	1.53 (0–3.24)	1 Case: single reviewer only.
Total	[3] 30.121	47	2967	0.11 (0.06–0.16)	

[1] CI denotes confidence interval, MRA medical-records administrator, and AE adverse event.
[2] Based on population-based estimates on discharges. For example. 1.53 percent = 415 of 27,179. See Figure 1.
[3] Seventy-four of 30,195 cases did not undergo physician review; they were dropped from the calculations of population estimates, and their weights were reallocated among the usable observations.

For 12 of the 47 matched observations, the medical-records administrators found that none of the 18 screening criteria were satisfied, and the review process ceased without participation by the physicians. Five of these 12 claimants alleged the failure to diagnose a condition during outpatient visits before the sampled hospitalizations. Among the remaining 35 cases, all of which were reviewed by physicians, clinical judgments about the cause of the adverse outcome and the contribution of negligence were often contradictory. In some cases the two physicians disagreed on the presence of an adverse event in the second stage of the process, and a third physician resolved the issue by finding no adverse event. In others the physicians agreed on causation but differed about the occurrence of, or their levels of confidence about, negligence. In nine cases, the reviewing team knew of pending malpractice claims but found no evidence of adverse events. (Details of the reviews of the 47 cases are available elsewhere.*)

*See NAPS document no. 04877 for three pages of supplementary material. Order from NAPS c/o Microfiche Publications. P.O. Box 3513. Grand Central Station, New York, NY 10163–3513. Remit in advance (in U.S. funds only) $7.75 for photocopies or $4 microfiche. Outside the U.S. and Canada add postage of $4.50 ($1.50 for microfiche postage). There is an invoicing charge of $15 on orders not prepaid. This charge includes purchase order.

Statewide estimates of adverse events due to negligence not resulting in malpractice claims

Ninety-eight percent (weighted rate) of all adverse events due to negligence in our study did not result in malpractice claims (Fig. 1—not reproducible in RECORD). The group of these cases for which the reviewers could determine the existence of disability and for which their combined score indicated either ''strong'' or ''certain'' evidence of negligence can be extrapolated to about 13,000 discharges statewide in 1984. Within this group, 58 percent of the patients had only moderately incapacitating injuries and recovered within six months. the remaining patients—those with moderate-to-severe disability—correspond to about 5400 patients discharged from hospitals in New York State. Over half these patients were under 70 years of age and thus likely to have lost wages as a result of the injury.

Follow-up reviews of medical records and claims

Medical records located after intensive follow-up were a richer source of claims than those found on the initial hospital visits, but there was no difference in the rates of adverse events or negligence between the initial review and follow-up.[7] twelve of the 580 patients whose records were found during follow-up filed malpractice claims against 18 providers, and four of these claims related to the treatment received during the sampled hospitalizations. The rate of claims among these patients (0.66 percent; 95 percent confidence interval, 0 to 1.37 percent) was six times higher than the rate for the initial review (0.11 percent), but the difference was not statistically significant.

In the cases of three of the four newly identified patient claims related to the sampled hospitalizations, one physician-reviewer found evidence of negligence whereas the other did not. Thus, the combined scores were below the threshold for a finding of negligence. The fourth case was not reviewed because the follow-up protocol for that hospital did not call for physician review.

Relative frequency of negligence and malpractice claims

By combining the results of the initial and follow-up reviews, we estimated the number of claims statewide to be 3570, or a rate of claims per discharge of 0.13 percent (95 percent confidence interval, 0.08 to 0.18 percent) in 1984. This estimate suggests a ratio of negligence to claims of 7.6 to 1 (27,179 to 3570). Our inability to link four claims to hospitalizations (or to rule out linkage) because of insufficient data had little effect on this

figure. If two of these four claims had been matched to the sample, the relative frequency would have changed little (7.3 to 1). The sample-based estimate of the number of patient claims statewide (3570) is comparable to the estimate based on the OPMC records of the number of patient claims for injuries in 1984 (3780) and the average annual number of patient claims filed from 1984 through 1986 (3670). thus, claims occur only 13 to 14 percent as often as injuries due to malpractice. Our estimate of the fraction of adverse events due to negligence that led to claims is, however, far lower (1.53 percent).

DISCUSSION

Other studies have examined the frequency of negligence in relation to the total number of claims.[5,6] Our study has taken the next step by matching individual clinical records with individual claims records to determine what fraction of instances of negligence leads to claims. Our data suggest that the number of patients in New York State who have serious, disabling injuries each year as a result of clearly negligent medical care but who do not file claims (5400) exceeds the number of patients making malpractice claims (3570). Perhaps half the claimants will eventually receive compensation.[7,18]

Why so few injured patients file claims has not been widely researched. Many may receive adequate health or disability insurance benefits and may not wish to spoil longstanding physician-patient relationships. Others may regard their injuries as minor, consider the small chance of success not worth the cost, or find attorneys repugnant.[19] Trial lawyers usually accept only the relatively few cases that have a high probability of resulting in a judgment of negligence with an award large enough to defray the high costs of litigation. A final possible explanation is that many patients may fail to recognize negligent care.[20]

Our results also raise questions about whether malpractice litigation promotes high quality in medical care. Historically, there has been scant empirical analysis of this issue.[21] Our data reflect a tenuous relation between proscribed activity and penalty and thus are consistent with the view that malpractice claims provide only a crude means of identifying and remedying specific problems in the provision of health care. Our findings also support recent comments about the limited usefulness of the rate of claims as an indicator of the quality of care.[22] Unless there is a strong association between the frequency of claims and that of negligence, the rate of claims alone will be a poor indicator of quality[23] because rates can easily vary widely at the same underlying frequency of negligence or adverse events. The filing of a claim could, however, signal a need for further investigation because of the likelihood that an actual adverse event or actual negligence prompted the complaint.

Our study differs from previous work in that it goes beyond statements about the rate of negligence in relation to the rate of malpractice claims. The relative frequency 7.6 to 1 does not mean, as is commonly assumed,[24] that 13 to 14 percent of injuries due to negligence lead to claims. As the linking of the medical-record reviews to the OPMC claims files has shown, the fraction of medical negligence that leads to claims is probably under 2 percent. The difference is accounted for by injuries not caused by negligence, as defined by our protocol, that give rise to claims.

This finding does not mean that the 39 cases of claims in which our physician-reviewers did not find evidence of an adverse event due to negligence are groundless under prevailing malpractice law. Our study was not designed to evaluate the merits of individual claims. Patients sometimes file claims regarding medical outcomes that do not qualify as adverse events by our definitions; without access to the full insurance records, we cannot assess the prospects of individual cases.

More generally, the process of and criteria for making decisions about causation and negligence differ in a scientific study and in civil litigation. In this study, majority rule determined whether there had been an adverse event or an adverse event due to negligence. Our reviewers sometimes disagreed about causation and negligence; when only one found negligence, the case did not qualify as an adverse event due to negligence (except in the rare case when there was only a single reviewer). In a lawsuit, a single expert opinion might be sufficient to support a finding of negligence; under our protocol it would not. When experts differ, the final judgment is especially sensitive to the process of decision making.[25] Thus, our findings are not directly comparable to the results of civil litigation.

Although this lack of strict comparability should warn us against drawing conclusions about the merits of individual malpractice claims, it does not undermine our findings about the small probability (under 2 percent) that a claim would be filed when medical negligence caused injury to the patient. This result remains robust in spite of the possibility of misclassification of individual cases, the effect of using different criteria for negligence, and the likelihood of missing medical records and missing data on malpractice claims.

Disagreement about or misclassification of an individual case need not bias our results. In the duplicate review of subsample of 318 medical records, reported earlier,[8] a second team of physicians did not identify the same group of adverse events as did the first team, but they did find about the same incidence of adverse events and adverse events due to negligence. A replication of the study might generate the same rates of adverse events and negligence but would not necessarily classify the same claims as backed up by evidence of negligence. Therefore, as in other studies based on implicit review of medical records,[26] disagreement about individual cases does not imply bias in our estimates.

The use of less criteria for negligence would not alter the rate of claims among the cases of adverse events due to negligence, but it would affect the overall frequency of negligence as well as estimates in this and earlier studies of the ratio of adverse events due to negligence to claims (7.6 to 1). New criteria for negligence would change our estimate of 1.53 percent only if they affected the rate of negligence among the claims differently from the rate of negligence among cases in which no claim was made. Our data suggest, however, that an increase in the rate of adverse events due to negligence among cases in which no claim was made matches any increase in the rate of negligence among claims. Had a judgment by either physician-reviewer that negligence had occurred been sufficient to count a case as an adverse event due to negligence under our protocol, the probability that an adverse event due to negligence would result in a malpractice claim would remain virtually unchanged (1.51 percent).

The existence of overlooked adverse events due to negligence would also not influence this estimate unless the proportions of cases of negligence missed among the claimants and among the nonclaimants were unequal. The medical-records administrators might have overlooked adverse events due to negligence during the first-stage screening. As reported earlier, however, the medical-records administrators missed evidence of negligence in only 4.5 percent of the charts randomly selected for a duplicate review.[8] Alternatively, the hospital records might have met none of the criteria for further review but still have involved negligent care.

On the one hand, undercounting instances of negligence among the cases in which malpractice claims were made would cause the estimate of 1.53 percent to be low. Although we cannot calculate the probability that an adverse event due to negligence took place among the 12 malpractice claims that were classified as having no evidence of negligence, we can calculate that probability for the claims found on screening to have evidence of negligence (0.20) (Table 3). The assumption that these 12 cases should have been identified as positive (as having evidence of a possible adverse event) would raise the estimate of the probability of litigation among adverse events due to negligence from 1.53 to 2.2 percent.

On the other hand, the medical-records administrators might also have missed adverse events due to negligence that were not in litigation, thus causing our estimate to be too high. Medical-records administrators may have been more likely to miss adverse events in the records of nonclaimants than in those of claimants because evidence of legal action was 1 of the 18 screening criteria. Assuming that 4.5 percent of the negative screens were falsely negative, as suggested by the duplicate review, and that the rate of adverse events due to negligence among these missed cases equaled the rate among the cases in which no claim was made that were identified as positive on screening, there would be additional adverse events due to negligence among the nonclaimants. Assuming further a much lower rate of negligence among the cases in which no claim was made that had truly negative screens, for example 1/20 the rate of those identified on screening as positive, the estimate of the rate of claims among the adverse events due to the negligence would be lowered from 1.53 to 1.2 percent.

These potential biases in the medical-records review are small as compared with the size of the confidence interval produced by sampling variation. Even with a rate at the upper limit of the 95 percent confidence interval (3.2 percent), the probability that a claim would be filed when a patient was injured as a result of medical malpractice remains well below previous estimates.

Malpractice claims would have been missed—another possible source of bias—if we had failed to locate a claimant's medical record and could not identify a claim through the record-matching process. The results of the extensive follow-up search for missing records suggest that hospitals may have selectively withheld the medical records of some claimants, but not of large numbers of them. The higher rate of claims per discharge in the records identified at follow-up is within the degree of variation expected with small samples. In addition, hospitals may have relinquished all records without regard to patient out-come but may have failed to report malpractice claims to the OPMC. The effort of the state government to achieve complete reporting suggests that we used the most complete, reliable data available, although no external sources can substantiate the completeness of the data.

Unrestricted access to medical records and full reporting of claims would not eliminate potential bias due to claims relating to medical care received in 1984 but not yet filed by May 1989, when our data collection ended. According to the OPMC data base, 90 percent of claims were filed within 4.4 years of the date of the injury. In addition, 43 percent of the adverse events were due to medical care

that was provided before the sampled hospitalization in 1984.[7] Thus, we expect that fewer than 10 percent of all possible claims were absent from the OPMC data base and that our estimates of the incidence of litigation are no more than 10 percent too low.

The similarity of sample-based and population-based estimates of the frequency of patient claims makes substantial bias due to missed claims unlikely. The similarity of the estimates suggests that in linking claims to medical records we missed few actual matches, and that by 1989 few claims related to our sample of hospitalizations from 1984 remained to be filed.

The results of this study, in which malpractice claims were matched to inpatient medical records demonstrate that the civil-justice system only infrequently compensates injured patients and rarely identifies and holds health care providers accountable for substandard medical care. Although malpractice litigation may fulfill its social objectives crudely, support for its preservation persists in part because of the perception that other methods of ensuring a high quality of care[27,28] and redressing patients' grievances[29] have proved to be inadequate. The abandonment of malpractice litigation is unlikely unless credible systems and procedures, supported by the public, are instituted to guarantee professional accountability to patients.

[We are indebted to Matthew Jaro, M.S., record-linkage consultant, for his expertise in computer-based record linkage.]

FOOTNOTES

[1] Bovbjerg RR. Medical malpractice on trial: quality of care is the important standard. Law Contemp Probl 1986; 49:321–48.

[2] Bell PA. Legislative intrusions into the common law of medical malpractice: thoughts about the deterrent effect of tort liability. Syracuse Law Rev 1984; 35:939–93.

[3] Abel RL. The real tort crisis: too few claims. Ohio State Law J 1987; 48:443–67.

[4] Lewis R. AMA presses plan to change state tort law. American Medical News March 1, 1985:1, 25.

[5] Danzon PM. Medical malpractice: theory, evidence, and public policy. Cambridge, Mass.: Harvard University Press, 1985.

[6] California Medical Association. Report on the medical insurance feasibility study. San Francisco: California Medical Association, 1977.

[7] Harvard Medical Practice Study. Patients, doctors, and lawyers: medical injury, malpractice litigation, and patient compensation in New York. Cambridge, Mass.: President and Fellows of Harvard College, 1990.

[8] Brennan TA, Leape LL, Laird NM, et al. Incidence of adverse events and negligence in hospitalized patients: results of the Harvard Medical Practice Study I. N Engl J Med 1991, 324:370–6.

[9] N.Y. Laws 1975, ch. 109, sec. 2.

[10] N.Y. Laws 1978, ch. 141, sec. 1.

[11] N.Y. Laws 1980, ch. 866, sec. 17.

[12] N.Y. Laws 1981, ch. 357, sec. 1.

[13] N.Y. Laws 1988, ch. 184, sec. 6 (amending N.Y. Insurance Law sec. 315(b)(2)).

[14] State of New York, Insurance Department Circular letter no. 14, 1988.

[15] Newcombe HB, Kennedy JM, Axford SJ, James AP. Automatic linkage of vital records. Science 1959; 130:954–9.

[16] Department of Commerce. Statistical policy working paper 5. Washington, D.C.: Government Printing Office, 1980:12–3.

[17] Shah BV. SESUDAAN: standard errors program for computing of standardized rates from sample survey data. Research Triangle Park, N.C.: Research Triangle Institute, 1981.

[18] General Accounting Office. Medical malpractice: characteristics of claims closed in 1984. Washington, D.C.: General Accounting Office, 1977. (Publication no. GAO/HRD–87–55.)

[19] Meyers AR. ''Lumping it'': the hidden denominator of the medical malpractice crisis. Am J Public Health 1987; 77:1544–8.

[20] Doherty EG, Haven CO. Medical malpractice and negligence: sociodemographic characteristics of claimants and nonclaimants. JAMA 1977; 238:1656–8.

[21] Brook RH, Brutoco RL, Williams KN. The relationship between medical malpractice and quality of care. Duke Law J 1975; 1975:1197–231.

[22] Office of Technology Assessment. The quality of medical care: information for consumers. Washington, D.C.: Government Printing Office, 1988:121–41. (SUDOC no. Y3.T22/2:2 M46/12.)

[23] Sloan FA, Mergenhagen PM, Burfield WB, Bovbjerg RR, Hassan M. Medical malpractice experience of physicians: predictable or haphazard? JAMA 1989; 262: 3291–7.

[24] Bennett WI. Pluses of malpractice suits. New York Times Magazine. July 24, 1988:31–2.

[25] Gustafson DH, Shukla R, Delbecq A, Walster G. A comparative study of differences in subjective likelihood estimates made by individuals, interacting groups, Delphi groups, and nominal groups. Organ Behav Hum Performance 1973; 9:280–91.

[26] Rubenstein LV, Kahn KL, Reinish EJ, et al. Changes in the quality of care for five diseases measured by implicit review, 1981 to 1986. JAMA 1990; 264:1974–9.

[27] Gaumer GL. Regulating health professionals: a review of the empirical literature. Milbank Mem Fund Q 1984; 62:380–416.

[28] Kusserow RP, Handley EA, Yessian MR. An overview of state medical discipline. JAMA 1987; 257:820–4.

[29] Miller FH. Medical malpractice litigation: do the British have a better remedy? Am J Law Med 1986; 11:433–63.

[From the New York Times, Mar. 5, 1995]

NEW YORK'S PUBLIC HOSPITALS FAIL, AND BABIES ARE THE VICTIMS

(By Dean Baquet and Jane Fritsch)

Each year for the last decade, dozens of newborn babies have died or been left to struggle with brain damage or other lifelong injuries because of mistakes made by inexperienced doctors and poorly supervised midwives and nurses in the teeming delivery rooms of New York City's public hospitals.

Some of the most prestigious medical schools and private hospitals are paid by the city to provide the care in its sprawling hospital system. But an examination by The New York Times shows that many of these private institutions have left life-and-death decisions to overworked nurses and trainee doctors who are ill prepared to make them.

The effects can be seen across the system, from the surgical suites to the clinics. But nowhere are the consequences more devastating than in the delivery rooms, where the course of a young life can be changed forever by a few minutes' delay, a malfunctioning monitor or a lapse of attention.

The delivery room disasters affect a broad spectrum of women, from those who do not visit a doctor until their labor pains begin to the healthiest and most conscientious of mothers-to-be.

Vilma Martinez, a 25-year-old Brooklyn factory worker, languished in the delivery room of Woodhull Medical and Mental Health Center in Brooklyn for 14 hours in July 1993, as nurses first struggled to deliver her baby, then desperately searched for a doctor. The baby's father watched in horror as a monitor showed the baby's heartbeat fade, then stop. In the end, no doctor came. The baby was stillborn.

Miriam Miranda, 35, was diabetic and H.I.V.-positive when she entered North Central Bronx Hospital in February 1994 to deliver here baby. Her problems would have tested the skills of the most experienced doctor, but a midwife was put in charge. When complications arose, the midwife struggled on by herself. Deprived of oxygen during labor, the baby died after 77 days. In internal documents, the hospital has conceded that the delivery should have been handled by a doctor.

These cases are more than the isolated tragedies that can occur in any hospital. Serious injuries to newborns are frequent in the delivery rooms of some of New York City's public hospitals. And delivery room crises have flared periodically in most of the public hospitals over the last decade.

It is not possible to say precisely how many of the 31,000 deliveries each year are mishandled. Most records detailing medical mistakes are kept secret, even from the parents of the children involved.

But a computer analysis by The Times showed that the death rate for babies of normal weight born at the public hospitals was substantially higher than the rate at private hospitals in New York City. For babies weighing more than 5.5 pounds, the cutoff doctors use as a gauge of general good health, the death rate in the first four weeks after birth at the public hospitals was 80 percent higher than that for babies born at private hospitals: For every 1,000 births of normal-weight babies at a private hospital, there was one death, while at the public hospitals, there were 1.8.

The public hospital also had higher rates in most categories of serious birth injuries, the study showed. And the rates were higher even after taking into account the differences in the health of mothers at the private and public hospitals. The Time analyzed city and state records of all births in the city in 1993, the latest year available.

Some hospital and city officials have known about the problems for years, and have worked mightily to keep them from the public. They fear a loss of public confidence and a flood of lawsuits.''

In a striking 1992 report, never made public, City Comptroller Elizabeth Holtzman analyzed the lawsuits of 64 children who had been left brain-damaged or permanently crippled because of negligence in the delivery rooms. Some of the suits were more than a decade old, and all had been settled in the previous three years.

Those lawsuits alone cost the city $78 million, the report said, and another 793 were pending.

''These cases are catastrophic and costly,'' the report said. ''Many of these infants are now grown children, suffering from multiple and severe disabilities, who require lifetime hospitalization or intensive home care.''

In a third of the deliveries, no senior physician was present, even though complications were evident before the deliveries began, the report said.

The New York City Health and Hospitals Corporation, the agency that runs the public hospitals, is the nation's biggest urban hospital system. Its network of 11 hospitals, 76 clinics and 5 chronic care centers is used by one in five New Yorkers. One quarter of the 130,000 babies born in the city are delivered in public hospitals.

With 50,000 employees and a $3.8 billion budget, the hospital corporation is a major economic force in some of the poorest communities. It has stood for decades as a testament that New York, more than any American city, is committed to equal health care for all.

But in recent years, events have converged to raise questions about the system's survival. It faces increasing competition from private hospitals, internal problems and a governor and mayor who believe that New York can no longer afford its expensive array of social services.

In a six-month examination of the agency, The Times reviewed confidential hospital documents, court filings and other public records, and interviewed more than 100 physicians, administrators and city officials. Four current and former high-level officials of the hospital agency confirmed that delivery room problems are grave and have plagued the system for years.

Efforts to resolve the crisis over the last decade have been halting and ineffective, even though a quarter of the babies born in New York are delivered at public hospitals, and obstetrics is a major portion of the hospitals' business.

Dr. Bruce Siegel, who became president of the hospital agency a year ago, said in a recent interview that he had not seen a pattern of problems in delivery rooms, but acknowledged that in some hospitals, young doctors are poorly supervised.

''I would certainly not be surprised that we had more adverse outcomes'' than in private hospitals, he said, ''figuring that we treat poor people, sick people, that the concentration of people have drug problems, low socioeconomic status, various infectious diseases and many other things is going to be clustered in our hospitals.''

The computer analysis by The Times showed that over all, women who deliver babies in public hospitals are at higher risk for problems than women who use private hospitals, though a vast majority are healthy and get prenatal care. But it also showed that the difference in the women's own risk factors was not large enough to explain the higher rates of newborn deaths and injuries at public hospitals.

Dr. Siegel said the data used in the analysis were not reliable because the public hospitals did not accurately report risk factors to the state. The Times analysis found little evidence, however, that underreporting was greater at public hospitals than at private ones.

New York City has run public hospitals for more than a century, but the system was reorganized three decades ago in an ambitious attempt to raise the quality of medical care for the poor to the standards of the best private hospitals. To shore up the public hospitals, each was paired with a private hospital or medical school that was paid by the city to provide doctors and oversee care.

Last year, the city paid more than $500 million to such prestigious institutions as the Albert Einstein College of Medicine, Mount Sinai Medical Center, Montefiore Medical Center and the Columbia University College of Physicians and Surgeons.

But a review of current and historic documents shows that the plan never lived up to expectations.

Nearly 30 years later, there are still two classes of medical care in New York City: one for people who can afford private doctors and hospitals, and another for those who must rely on the public hospitals.

In private hospitals, women are met by their own doctors, who oversee their labor and deliveries. But in public hospitals, babies are delivered by whomever is on duty, and a woman may never see a doctor.

Officials of the private institutions that provide care in the public hospitals acknowledge that many delivery rooms are understaffed, and that midwives and trainees have sometimes been given more responsibility than they can handle. But they contend that the city has not given them money to provide enough experienced doctors to handle every shift adequately in overcrowded hospitals.

WITHOUT A DOCTOR, A TINY BEAT FADES

Vilma Martinez remembers the time, 10:04 P.M., and the silence and, most particularly, the wordless message of the nurse, who drew a finger across her throat as if she were slashing it with a knife. The meaning was clear: The baby was dead.

After that, she remembers little. But she can return to the morning of the day, when the labor pains started, and recall with some precision the 14 hours that led up to the stillbirth of her only child. It was a boy—6 pounds 13 ounces—and his heart had been beating steadily and strongly when she entered Woodhull Medical and Mental Health Center at 8 A.M. on July 23, 1993.

Officials of the hospital will not discuss what happened to Ms. Martinez or explain why no doctor came to her aid. Ms. Martinez and her boyfriend, Tomas C. Abreu, the baby's father, have filed a lawsuit against Woodhull and the New York City Health and Hospitals Corporation. They, too, declined to discuss the case, but their recollections are recorded in court depositions that provide searing accounts of a day of joy that dissolved into worry, then panic, the despair.

Their version of what happened is supported in large part by the notes of the nurses who tried, with increasing desperation, to find a doctor, and when they could not, tried to deliver the baby themselves.

Ms. Martinez, an emigrant from the Dominican Republic, was 23 when she learned in December 1992 that she was pregnant. She and Mr. Abreu, who was also from the Dominican Republic, had minimum-wage jobs at a glass and mirror company and had been living together for about two years in the East New York section of Brooklyn.

Her health was good and her pregnancy was uncomplicated. She took her vitamins conscientiously and went to Woodhull for monthly, and later weekly, checkups.

So there was no cause for concern when the labor pains began about 7 A.M. on that Friday morning in July. By 7:45 A.M. she was in the car with Mr. Abreu and her mother, and by 8 A.M., they had arrived at Woodhull, the strikingly modern medical complex that rises above the warehouses, storefronts and working-class homes of Greenpoint and Williamsburg.

After an hour, a nurse on the seventh floor, the maternity floor, motioned for her to climb on a gurney.

Because Ms. Martinez understood little English and the nurses and midwives spoke no Spanish, their communication was limited to gestures and facial expressions. It went that way the entire day. Forty percent of the people in the area around Woodhull speak primarily Spanish, but no one on the staff translated for Ms. Martinez.

Eventually, she was put in a little room where she spent the long day. About noon, a nurse inserted an intravenous line in her arm. The contractions gathered strength as a monitor kept track of the baby's heartbeat, and her mother and Mr. Abreu hovered near the bed.

About 5 P.M. she began bleeding heavily and it seemed to go on and on ''like a blood bath,'' she recalled.

Near 7:30 P.M., she was screaming from pain, and someone who seemed to be a doctor went to the door of the room. He spoke to the nurses, but left almost immediately. ''He didn't even touch me or anything,'' she recalled.

A nurse's note at 7:40 P.M. described another sign of trouble—''prolonged decelerations'' in the fetal heart rate. The rate often drops during contractions, but should rise again. Prolonged drops can mean the baby is not getting enough oxygen.

So the nurse called for the doctor and the midwife, according to the log. The doctor examined Ms. Martinez and gave instructions that she should not push, the log said. Neither Ms. Martinez nor Mr. Abreu recalled the doctor's actually having examined her. The nurse's notes do not explain why the doctor left.

Soon, the baby's head was visible and the nurse and the midwife shooed Ms. Martinez's mother out of the room.

They began struggling to get the baby out, Ms. Martinez said, turning her this way and that, even face down for a while. They tried turning the baby's head, too, but nothing seemed to work. The baby was stuck. She recalls being ''crazy, desperate with pain.''

* * * * *

The final two hours were the most harrowing, the couple said. They were left mostly alone in the room, with no idea where the nurses had gone, as the heart monitor bleeped, spewing yards of paper that recorded the baby's struggle for life.

Mr. Abreu recalled watching the glow of the monitor and the tiny heart-shaped light, ''like a little heart that seemed to be beating.'' He kept up a constant patter to reassure her, but she kept asking for a doctor. ''She was saying, 'I am going to die.' ''

Mr. Abreu left the room in search of a doctor, and was told that the doctors on duty were on the eighth floor performing a Caesarean section. He returned to the room and stood vigil. Then he noticed that the baby's heartbeat was slowing markedly. Ms. Martinez recalled that he left the room again, ''just desperate.'' And she remembered hearing him ask—beg—for a doctor.

But all he could find was a nurse, so he took her back to show her the monitor. ''I was also looking at the heart, at the little heart,'' he said. ''It had stopped.''

An entry in the nurse's log at 9:20 P.M. notes ''continuous'' fetal heart rate decelerations. At that point, the midwife ''said to call in an M.D.,'' according to the log. But two doctors were busy doing a Caesarean section and a third was occupied in the emergency room, the log said.

''We cannot get an M.D. to see the patient,'' the nurse wrote.

To Ms. Martinez, the midwife seemed desperate. ''She didn't even put on her gloves in order to grab the child,'' Ms. Martinez said. The midwife shouted for her to push and someone pressed on her abdomen. They got the baby out, and started slapping and pounding, but he did not draw a breath or make a sound.

Finally, a doctor entered the room. The midwife turned to him, and silently drew a finger across her neck.

''I started to scream and scream,'' Ms. Martinez said. ''A mother, while she is giving birth, how can she feel when that is happening? I was desperate.''

Others came, and as the doctors and nurses whispered among themselves, Mr. Abreu asked them to explain what had happened. ''But they wouldn't tell me a thing,'' he said. ''All they were saying was that the baby was dead.''

DISASTER REPORTS ARE SUPPRESSED

Delivery room disasters became frequent a decade ago, when a wave of new immigrants began crowding into aging hospitals, increasing pressure on medical staffs already overburdened.

As deliveries rose more than 30 percent in the 1980's, even the most diligent staffs were overwhelmed. The overflow fell to nurses, midwives and residents, doctors in their first years after medical school.

Then, at some busy obstetrics wards, including Lincoln Medical and Mental Health Center in the South Bronx and North Central Bronx Hospital, the residents were pulled out. Their training programs had been shut down because the national officials who accredited them feared that the public hospitals were tossing young medical school graduates in over their heads.

The effects of the crowding and staff shortages were felt immediately.

* * * * *

For example, Dr. Wayne Cohen, who in 1984 ran North Central Bronx Hospital's obstetrics department, recalled that a number of newborns were injured as the hospital became more reliant on nurse-midwives, who were not trained for the frenetic pace and difficult deliveries. A typical big-city hospital might have five or six serious birth injuries a year, he said. But, at North Central

Bronx, he said, ''There were twice that number of everything, and I didn't get to hear of everything.''

At Metropolitan Hospital Center, in East Harlem, officials called in the police in the late 1980's because several newborns mysteriously suffered broken arms or legs. Police officials say they never determined the cause, or or when the babies were injured.

About that time, officials of the hospitals corporation grew so alarmed after some serious incidents at Lincoln that they complained to New York Medical College, which provides the medical care at Lincoln.

But in a vast system that bounces from crisis to crisis, from budget shortfalls to political scandals, officials of the Health and Hospitals Corporation were unable to put together all of the pieces to perceive what was rapidly becoming a systemwide crisis.

In 1983, alarmed by a rise in malpractice awards, analysis for the city's Office of Management and Budget began a far-reaching, confidential study. After poring over 2,000 lawsuits, they found a disturbing patter: Many of the worst cases involved residents in the delivery rooms and elsewhere who nervously bumbled through with little guidance from senior doctors.

The 165-page report, completed in 1991 was ignored. Its authors said the patterns had continued, but by the time the study was printed and bound, lawyers for the city said it was based on old information.

A year later, Ms. Holtzman, the City Comptroller, finished her report. ''The enormous cost of impaired newborn cases in both human suffering and taxpayer dollars requires the City's attention,'' it said.

Among its findings were these: In 12 of the 64 cases reviewed, the staff failed to react promptly to signs of fetal distress; in 5, the staff failed to perform adequate fetal monitoring; in 9, the staff ''unreasonably delayed'' Caesarean sections; in 11, oxytocin, a drug used to induce labor, was improperly administered.

As Ms. Holtzman prepared to make her report public, the hospitals corporation blocked its release, arguing that it was based on privileged information.

Alan G. Hevesi, her successor, said he was unaware of the report until The Times requested it. He released a copy, saying that it was too important to remain secret.

Delivery room disasters had become a recurring theme in confidential weekly meetings held by the hospital agency to analyze its most mishandled cases. In these discussions, known as quality assurance meetings, officials speak bluntly, naming doctors and upbraiding administrators with the understanding that by state law, none of what they say leaves the room.

Most delivery rooms in the system have come up for sharp criticism at these sessions, usually because of mistakes by unsupervised trainee-doctors and midwives, said four participants in the weekly meetings, who spoke on the condition that they not be identified. Over the last five years, the delivery rooms of four hospitals have been cited more frequently than the others, said the participants. These hospitals are Woodhull, Kings County Hospital Center in Brooklyn, North Central Bronx and Lincoln.

Over the same five years, the State Health Department, which regulates hospitals, has rebuked the four hospitals and Coney Island Hospital in Brooklyn for delivery room mistakes, state records show.

Regulators found instances in which overworked staffs, including residents, misdiagnosed serious conditions and made patients wait perilously long for treatment.

In interviews, officials of most of the hospitals acknowledged delivery room problems, but said that they had made significant improvements in recent years.

At Woodhull, for example, officials said the director of obstetrics was forced out late last year after a series of mistakes by the staff in the delivery room.

''I'm not going to make any apologies for Woodhull,'' said Dr. Siegel, the head of the hospitals agency, who added that he was replacing the private corporation that runs Woodhull, Woodhull Medical Associates. He said that many of the hospital's patients were going elsewhere because of Woodhull's reputation for poor care.

''That obstetrics department is closing down on its own,'' Dr. Siegel said.

At Lincoln Hospital, officials said they were working on their problems, which they said were caused by poor supervision of residents and unreasonable waiting times for women seeking prenatal care. ''We were asking for trouble,'' said Roberto Rodriguez, the executive director. ''We were taking a risk.''

Jean Leon, the executive director of Kings County Hospital, said she has seen no delivery room problems since she arrived in July, 1994.

Howard Cohen, the director of Coney Island Hospital, said any problems at his hospital were caused by the press of high-risk patients.

Officials at North Central Bronx said their problems resulted from poor supervision and understaffing.

LIFE OR DEATH WITHOUT A DOCTOR

By the time Michael Elias Cottes was born on Feb. 11, 1994, his left shoulder and arm were broken. He was so hopelessly stuck after 20 hours of labor that the obstetrician cracked his tiny bones trying to wrest him free.

Still, his birth was a moment of triumph for his mother, Miriam Miranda. She had come to terms with her having the AIDS virus, and had sought out prenatal care with something approaching zeal. At 35, she had beaten back gestational diabetes and even learned to give herself insulin injections.

So, when the doctor at North Central Bronx Hospital finally extracted the silent child and rushed him out of the delivery room, Ms. Miranda allowed herself to rejoice, savoring the minutes as she waited for the doctor to bring her baby back. ''I was so happy,'' she recalled in an interview.

But the doctor returned alone and in tears ''Miranda,'' she said, ''we did what we could. The baby was without oxygen for 10 minutes.''

Michael lived for 77 days, probably deaf and blind.

Throughout the torturous hours of labor, Ms. Miranda had been in such pain that she was only vaguely aware of the drama unfolding around here. She did not know that the midwife had seen signs of serious trouble on a monitor. And she did not know that by the time the doctor arrived, it was already too late to do much for the baby.

Last March, officials of North Central Bronx held a private meeting and admitted among themselves that the hospital had made some mistakes in her case. Specifically, they acknowledged, such a complex delivery should have been handled by a doctor from the start, according to an internal report obtained by The Times.

From the time of her first prenatal visit at North Central Bronx, Ms. Miranda was seen almost exclusively by midwives. They did the pelvic exams, weighed and measured her and drew blood for routine tests. ''They told me it was a boy,'' she said in a recent interview, ''a boy who was doing good.''

As soon as she learned she was pregnant, Ms. Miranda did everything she could think of to have a healthy baby. She quit a steady job as a cafeteria worker in Puerto Rico, and with her two children moved to New York City, where, she believed, she would get the best possible care.

''She wanted to have this baby,'' said Tracy Stockham, the state case worker who helped Ms. Miranda navigate the complex bureaucracy of services for H.I.V. positive women. ''She said, 'This will be my last child because I'm infected.'''

In her seventh month, when a test showed that she had developed diabetes, her midwife said that she lacked the expertise to continue with the case. But instead of turning Ms. Miranda over to an obstetrician, the midwife referred her to another midwife.

Still, Ms. Miranda did well. At 10 A.M. on Feb. 10, 1994, at the end of her 40th week, she entered the warren of small labor and delivery rooms on the hospital's seventh floor, where a midwife administered Pitocin, a powerful drug that induces labor.

By 3 A.M. the next day, 17 hours later, the baby was still not out: According to hospital records, the fetal monitor, which keeps track of the baby's heartbeat, showed irregularities.

This meant one of two things: Either the baby was not getting enough oxygen through the umbilical cord, or the monitor was not giving an accurate reading, a common occurrence.

So the midwife faced life-and-death choices. She could prick the baby's scalp with an electrode to check its blood for oxygen, possibly exposing him to the AIDS virus. She could let the labor take its course and hope that all was well. Or, she could summon a doctor to perform an emergency Caesarean section.

There is no explanation in the hospital records for why a doctor did not intervene earlier.

She recalled that he cried only once during the final two weeks of his life. As it turned out, he was not infected with H.I.V.

Once, she bundled him up and proudly brought him to visit Ms. Stockham, the caseworker who had sent her to North Central Bronx.

''The baby was constantly gasping for air,'' Ms. Stockham recalled. ''Miriam said: 'People are saying Michael can't see or hear. But when I sing to him, he turns to me.'

''I had to look inside myself,'' Ms. Stockham said, ''and say, 'Did I do the right thing by sending her to this hospital?'''

YOUNG TRAINEES LEFT UNSUPERVISED

Young doctors just out of medical school are the backbone of New York's public hospitals. There are more than 3,500 of these trainees, or residents, working in the system to get experience and learn specialties.

Because the system depends so heavily on them, it is crucial that the hospitals attract top graduates. A need to improve the quality of residents was one reason the city entered into its partnership with New York's most renowned private medical institutions 30 years ago. The theory was that the private hospitals could use their reputations to attract the best medical school graduates, then rotate them through the public system.

But for a variety of reasons, some of these private institutions have set up separate residency programs for the city hospitals, which have generally attracted graduates with poorer qualifications.

Virtually all the residents working at Presbyterian are graduates of medical schools in the United States, including some of the most prestigious in the country. But only 34 percent of the residents working at Harlem graduated from schools in this country. The rest were trained at foreign schools, many in developing nations.

Foreign medical school graduates, especially those from developing countries, are generally less desirable to hospitals because they may be unfamiliar with the newest technology and treatments, hospital corporation officials say. Dr. J. Emilio Carrillo, who was president of the corporation from 1990 to 1991, said he frequently complained that some training programs had far too many students educated overseas.

Columbia officials said that Harlem Hospital decided decades ago to have its own residency program in order to attract black graduates who might one day practice in the neighborhood. Dr. Edward B. Healton, associate dean of Columbia and medical director of Harlem Hospital, said that the Harlem program was not as popular as Columbia's, and had difficulty attracting graduates of United States medical schools.

Mount Sinai School of Medicine runs three hospitals, one private and two public. Most of its residents rotate through all three. But in some specialties, there are separate residency programs at each hospital. In these fields, more than 95 percent of the residents working at Mount Sinai are graduates of medical schools in the United States. But that is true of only half the residents at the city-owned Queens Hospital Center. And only 68 percent of the residents in the program set up separately for Elmhurst Hospital Center in Queens graduated from schools in this country.

Under their city contracts, the private hospitals are also supposed to supply attending physicians, the senior doctors who supervise residents. But virtually every study has accused the private hospitals of leaving residents largely unsupervised.

The hospital most frequently cited for leaving care to residents is Kings County Hospital Center, one of the nation's busiest and biggest.

In November 1991, the State Health Department concluded in a scathing report that there was ''inadequate, and in some cases nonexistent'' supervision.

A month later, on Dec. 23, Roxane Murray, a healthy 24-year-old who had just received an honorable discharge from her Army Reserve unit, entered Kings County to deliver her second child. By Christmas Eve, Ms. Murray was in a coma, and 17 days later, she was dead.

Her medical records relate a chaotic 27 hours, during which much of her care was provided by residents. The chain of events that led to her death began when a fetal monitor malfunctioned, making it impossible to determine the baby's condition. So a decision was made to do a Caesarean section, and a first-year resident in obstetrics was allowed to perform the operation. In the recovery room, a first-year resident in anesthesiology supervised Ms. Murray's care.

She hemorrhaged for at least one hour before the attending physician, the senior doctor on duty, checked on her and then left. Because Ms. Murray continued to hemorrhage, the residents ordered intravenous prostaglandin, the drug of choice to stop the bleeding, but the hospital pharmacy did not have any. So they tried a prostaglandin suppository, a less effective treatment.

Later, as Ms. Murray lapsed into unconsciousness, the attending physician and the chief resident performed a hysterectomy to control the bleeding. It didn't work.

Several hours passed and senior doctors in the obstetrics department did exploratory surgery. They found four liters of blood in her abdomen and quickly tried to tie off an artery that was gushing, but accidentally sliced through a nearby vein. She never regained consciousness. The baby, an 8-pound 14-ounce boy, and his brother are being reared by Ms. Murray's mother.

State regulators, called in by the family's lawyer, Michael V. Kaplen, excoriated the hospital for ''ineffective, inappropriate treatment.'' At no point did any doctor or resident call in an expert in hematology, who might have got the bleeding under control, the regulators said.

In addition to residents, there is a little-known class of trainee doctors working in New York hospitals. They are house doctors, medical school graduates who have either failed or not yet taken licensing examinations.

Hospitals turn to them when they have trouble attracting fully qualified doctors, or cannot fill night and weekend shifts. The graduate is granted a two-year ''limited permit'' by the state to practice only in one hospital under close supervision.

Dr. Siegel, the head of the hospital agency, said he was not happy with the use of house doctors and was moving to phase them out.

Until last December, shortly before his limited permit expired, Narpat S. Panwar was one of them. A native of India and a graduate of the University of Guadalajara Medical School in Mexico, Dr. Panwar had been trying unsuccessfully to pass the national examinations for 14 years when he was hired by Woodhull hospital in 1993 to work as an obstetrician.

Dr. Panwar was on duty over the Fourth of July weekend in 1993 when Paula Toala arrived to deliver her baby. He saw her through an extremely difficult 10-hour labor.

Eventually, he got the baby out, but only then found what the trouble had been: The infant, whose mother was average size, weighed an extraordinary 13 pounds.

Dr. Panwar had twisted and stretched the neck and shoulders severely enough to cause nerve damage, the family's lawyer, Jesse S. Waldinger, said in papers filed in a malpractice suit. The child suffers from Erb's palsy, a nerve injury that has limited movement in her right arm, he said.

''This is a case that was screaming for a Caesarean section,'' Mr. Waldinger said. In the court papers, he argued that Dr. Panwar should have called for assistance.

Dr. Panwar, 51, is now practicing in West Virginia and has obtained a full license after passing his examinations. He declined to discuss the case. The city is fighting it.

BRONX MUNICIPAL TAKES GIANT STEPS

Bronx Municipal Hospital Center, a sprawling complex that has served the east Bronx for 40 years, is one public hospital that has made significant progress toward solving its delivery room problems.

Hospital officials have acknowledged that through the 1980's newborns were injured there because of mistakes by unsupervised residents working in an overcrowded maternity ward.

In June 1992, jolted by major lawsuits, the hospital pushed the Albert Einstein College of Medicine, which oversees care at Bronx Municipal, to revamp the delivery room.

Midwives were instructed to call for help at the first sign of trouble, and residents were told not to perform Caesarean sections without a senior doctor in the room. One nurse was specifically assigned to spot the problem cases and try to make sure that a similar mistake did not occur again.

''The city was spending so much money defending obstetrics suits, they just made a decision that it would be cheaper to hire people who knew what they were doing,'' said Dr. Wayne Cohen, the medical director of Bronx Municipal Hospital.

The drop in delivery injuries to mothers and infants was swift. The program cost about $750,000.

In 1993, the change was noticed at the hospital agency's headquarters, where Edna Wells Handy, the general counsel, said she had already concluded that injuries to newborns were among the worst problems facing a troubled system.

Ms. Handy said she asked the city for $1.5 million in 1993 to expand the Bronx Municipal program to two other hospitals struggling with delivery room problems. But by the time the proposal made its way through the bureaucracy, there was a new mayor and a new administration at the hospital corporation with little knowledge of the delivery room crisis or her proposal.

''If it really works, I'll do it,'' Dr. Siegel said in an interview Feb. 15. ''I'm disturbed that I hadn't heard about it before.''

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

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The majority leader.

Mr. DOLE. Mr. President, thank you.

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

AMENDMENT NO. 604 TO AMENDMENT NO. 603

Mr. LIEBERMAN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Thomas amendment, amendment No. 604.

(Mr. MCCONNELL assumed the Chair.)

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to speak first on the underlying bill, S. 565, and then to take the opportunity to say a few words on behalf of the underlying amendment offered by the distinguished occupant of the chair, the Senator from Kentucky [Mr. MCCONNELL], of which I am proud to be a cosponsor.

Mr. President, I want to first discuss the Product Liability Fairness Act of 1995 and particularly congratulate Senators GORTON and ROCKEFELLER for producing a product liability bill that really has garnered broad bipartisan support. I am hopeful, finally, after all these years of effort, that this bill will, in fact, not only be a good bill but will become a very good law.

Thanks are also due to Senator PRESSLER and others on the Commerce Committee for enabling us to take this bill up so early in this session, all of us having seen similar bills supported by a majority of Members of the Senate nonetheless go down to defeat because of gridlock caused by a clock that was running out.

Mr. President, this debate is now a few days old. Perhaps what has surprised me most in the debate are those arguments that have been made on behalf of the status quo in our civil justice system. There is certainly room for disagreement about how best to make our civil justice system fairer and more rational, but, frankly, it is hard for me to understand how anyone can say that our current system does not need substantial reform. It is inefficient, unpredictable, costly, slow, and unfair. Its lottery-like nature costs everyone too much—plaintiffs, defendants, manufacturers, product sellers, and consumers.

Mr. President, in my view, you can add the civil justice system to the list of fundamental institutions in our country that are broken and in need of repair. For me, repair begins with remembering what may be lost in the debate and the reality of the system today, which is that the purpose of the system is first to compensate people who are injured as a result of someone else's negligence; that compensation is at the heart of the system. And, second, and in doing so, to deter future negligence by that or other parties.

In our time, unfortunately, the civil justice system has too often become a game of legalistic sophistry, of bullying, of bluffing, a game which overcompensates lawyers, undercompensates victims, particularly seriously injured victims, and costs all the rest of us an awful lot of money in higher prices for consumer products, for health care, higher premiums for insurance, fewer jobs, and fewer new products to improve and protect our lives.

And, of course, all of that, in sum, contributes to the cynicism and mistrust of our legal system felt by average Americans, no matter what the participants in the system feel about it, and that cynicism and mistrust is profoundly corrosive and ultimately may be the most significant cost of our civil justice system in America today.

Mr. President, opponents of this bill like to cast the debate in either/or terms—either you are pro-business or pro-consumer; either you are pro-innovation or pro-safety.

But I respectfully suggest that sort of rhetoric misses the point and prevents us from discussing this issue in a fair and rational manner. The fact is that this bill, the underlying bill, S. 565, is both pro-business and pro-consumer, pro-innovation and pro-safety.

It is aimed at putting liability back where it should be, on the parties who are actually responsible for any harm caused to an individual, and so best able to prevent that injury and compensate the victim.

Mr. President, I did not always support a national or Federal approach to product liability reform or tort reform generally, and I can understand the hesitancy, particularly of some of the Members, to support Federal involvement in what traditionally has been a province of the States.

In fact, in my previous public incarnation as attorney general of Connecticut, and a member of the National Association of Attorneys General, I had some real skepticism about some of the earlier Federal product liability legislation. It would have swept away virtually all State product liability laws and repealed the doctrine of strict liability for product defects.

This bill is not that extreme, but what changed my mind was listening to people in Connecticut. As I traveled the State, I kept finding that product liability laws were being raised as a major concern of business men and women from small and large manufacturing companies who were trying to make a living, who were trying to create jobs. They told me of problems they experienced with the product liability system, and of the expense of defending themselves, even when they win. They told me of the costs of settlement to avoid paying litigation costs—not because there was real negligence—and of the time and energy that product liability suits diverted away from the business of designing new products and bringing them to market.

So I listened to those folks, and I came to understand the necessity of Federal action and, of course, to understand the reality and appreciate the reality that we are one country; that products travel from State to State; that people using them travel from State to State; and that there is a crying need out there in the interest of every State and our country, our economy, the equity of our society, to build a floor of fairness, a common system that will protect the rights of all.

Mr. President, the debate really should center around users and consumers, because ultimately it is the consumers who suffer most from the status quo. Consumers are the ones who do have to pay the higher prices in order to cover product liability-related costs. If a ladder costs 20 percent more because of liability-related costs, it is consumers, not the businesses, who end up paying the 20 percent premiums.

Consumers are the ones who suffer when valuable innovations do not occur or when needed products, like life-saving medical devices, do not come to market or are not available in our country any longer because no one will supply the necessary raw materials. The inadequacies and excesses of our product liability system are quite literally matters of life and death for some people whose lives depend on medical devices that may no longer be available in the United States.

This is not a theoretical problem. Life-saving and life enhancing products are at risk today—now—and doctors and patients are justifiably worried because raw material suppliers have stopped selling their materials to medical device manufacturers.

I am very proud to say that included in the underlying bill, S. 565, is a bill that I was privileged to introduce last year and again this year with my friend and colleague from Arizona, Senator MCCAIN, the Biomaterials Access Assurance Act of 1995, which is intended to address this emerging crisis in the medical device sector of our economy, which is a lifesaving sector. I know there will be amendments addressed to that section of this bill, and I look forward to speaking in more detail at that time.

Mr. President, even for its intended beneficiaries, people who are injured by defective products, the legal system hardly can be said to work well. The GAO, in a 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. That is a very long time for an injured person to wait for compensation.

The underlying bill, S. 565, will shorten that time. In some instances, too, our product liability laws have enacted barriers to a lawsuit that just do not make sense. For instance, in some States, the statute of limitations—that is 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 person injured knows or could ever know there is a suit to bring.

No one will argue that this bill will cure all the ills in our product liability system. That would require a truly gargantuan overhaul, and I doubt we could reach agreement as to what that would look like. But we can, I believe, work to enact a balanced package of reforms that work step by step to eliminate the worst aspects of the current system, to restore some balance to our product liability system. I am confident that S. 565 does just that.

Mr. President, I want to speak now about the underlying amendment, which I have been pleased to offer with the occupant of the chair, Senator MCCONNELL, and also Senator KASSEBAUM. This legislation was introduced in February and subsequently considered and reported out, though in slightly different form, by the Labor Committee. To put it simply, this bill is designed to reduce the inefficiencies and mitigate the unintended effects of our malpractice system.

This amendment is aimed at trying to improve a series of problems in our medical malpractice system that are comparable to those which the underlying product liability bill attempts to resolve or improve in our basic product manufacturing system. And again, it is consumers who are paying the extra money to support the current inefficient system that overcompensates the less injured, undercompensates the more seriously injured, and gives an awful lot of money to those who are keeping the system going, particularly lawyers.

Our present system for compensating patients who have been injured by medical malpractice is ineffective, inefficient and, again, in many respects, unfair. The system promotes the overuse of medical tests and procedures defensively by doctors who have told me, and I am sure told every other Member of this Chamber, they would not order this test, it is not medically necessary, but they do it to protect themselves from the fear of a possible lawsuit.

The Rand Corp. has estimated the ways in which the current defensive practice of medicine actually costs the victims of malpractice. Rand has estimated that injured patients receive

only 43 percent of the money spent on medical malpractice and medical product liability litigation. That is 43 cents out of every dollar, and victims often receive their awards only after many, many years of delay because of the ornate process, the bullying and bluffing that the current rules of malpractice encourage.

In fact, I would say that our current medical malpractice system is a stealth contributor to the high cost of health care. It is why those of us who worked to adopt a bipartisan health care reform bill always felt that if we could do something about medical malpractice and the cost it adds to the system, we could reduce concretely, not speculatively, the cost of health care.

The American Medical Association tells us liability insurance premiums have grown faster than any other physician practice expense. The cost of liability insurance is estimated at $9 billion—that is just for the insurance—$9 billion in 1992.

Incidentally, my friend and colleague from Massachusetts, Senator KENNEDY, opposing the underlying amendment, said that the insurance companies are doing very well, making a lot of money in medical malpractice coverage.

That is a strange argument to make against this amendment. This amendment was not put in for the benefit of the insurance industry. This amendment was put in for the benefit of patients, doctors, and all of us who pay health insurance premiums or pay the cost of doctor care, which is inflated because of the current system.

So it is an interesting argument that the insurance companies are doing well at it. But it is not relevant to the purpose of this amendment. In fact, it may in some ways justify our amendment. It may suggest another reason why the current system needs to be shaken up.

Let me go back to defensive medicine and try to detail briefly its impact on the current system because it is even greater than the direct cost of liability insurance. The Office of Technology Assessment—our own office here—has found that as high as 8 percent of diagnostic procedures are ordered primarily because of doctors' concerns about being sued. That does not sound like a high percentage, but it amounts to billions of dollars. These defensive practices alone—sometimes difficult to measure—present a hidden but very significant burden on our health care system.

There is a well regarded consulting firm called Lewin-VHI. They have stated that hospital charges for defensive medicine were as high as $25 billion in 1991. That is an enormous figure. Basically what they are saying is that as much as $25 billion of the costs—this is not paid by strangers out there, this is paid by each of us in our health insurance premiums—is the result not of medical necessity but because of defensive practice occasioned by the existing medical malpractice legal system.

Taxpayers and health care consumers bear the financial burden of these excessive costs. Liability insurance and defensive medicine insurance premiums also drive up the cost of Medicare and Medicaid and therefore exacerbate an increased Federal budget deficit. Further, in specialties such as obstetrics—the subject of the second degree amendment pending in the Senate—where malpractice premiums have skyrocketed, malpractice liability is reducing access to quality health care.

The American College of Obstetricians and Gynecologists reports that malpractice costs for their professionals increased 350 percent between 1982 and 1988; and that by 1988, 41 percent of the obstetricians and gynecologists surveyed indicated that they had made changes in their practice patterns, including stopping seeing high-risk patients—the people who most need their care—because of their concerns about medical malpractice suits.

I can mention a group of doctors I know in the greater New Haven area, where I am from in Connecticut, who have ceased delivering babies and have changed their practice exclusively to gynecology because of their concern about medical malpractice lawsuits.

The amendment we are discussing today that Senator MCCONNELL and I have put in will begin to address these problems—these perverse, unfair effects, inefficiencies of our current system, and they will do so by directing a greater proportion of malpractice awards to victims. That is what the system, as I said at the outset, was supposed to be all about. How can we compensate the victim of genuine malpractice?

Let us be clear. There is nothing in this bill that would at all limit the liability of a physician who was guilty of malpractice and injured a patient. The whole aim is to put the burden of the law on that negligent physician so that that physician is being called upon to compensate the victim of that malpractice—not to impose a collective burden that results in everybody's premiums being raised and everybody's costs of health care being raised. The current system compels the practice of defensive medicine and in settling out lawsuits for fear of suffering greater liability in the current malpractice system, which too many people think is really a kind of lottery.

The current bill also will discourage frivolous lawsuits and enhance the quality assurance programs we all want. Key provisions of the reform include, No. 1, establishing a uniform statute of limitations, 2 years; No. 2, allowing periodic payments for awards greater than $100,000; No. 3, applying several—not joint and several—liability for noneconomic damages, pain and suffering. There is a concept—joint and several liability started out in the law as a way of proportioning responsibility when an accident was caused by a number of different parties working together in a way that caused negligence, and often it was not clear which one actually caused it. So they said everybody could be held liable regardless of the percentage of negligence. It now has grown to a point where what it really means is that somebody who is not liable, or liable very little, if they happen to have deep pockets, they can be held fully liable. That is the wrong message to send.

The whole idea of our civil justice system should be to establish a basic principle, which is, if you do something wrong, you have to pay. If you hurt somebody, you have to pay. If you do not, you should not have to pay. What kind of cynicism is developed when somebody who did little or no wrong ends up having to pay the whole bill because somebody else slipped away?

Our amendment also adopts the basic proposal of the underlying bill that punitive damages—which have been much discussed here and are an essential part of the continued bullying and bluffing that goes on in our tort system—be limited to $250,000 or three times economic damages, whichever is greater. Attorneys fees will be limited in our amendment—contingency fees to 33⅓ percent of the first $150,000 award and 25 percent on anything above $150,000. As my mother would say, I suppose, do not worry about the lawyers, they are still going to be able to live pretty good lives.

In medical malpractice cases, it would strengthen the standards for awarding punitive damages, strengthen State licensing boards and quality improvement programs by using 50 percent of punitive damage awards to fund investigations and disciplinary actions to prevent malpractice.

That is a great section of this proposal. I am proud to have worked on it with Senator MCCONNELL. As far as punitive damages are awarded, let us not take 50 percent of that money and throw it into the pot for a contingency legal fee, but let us use it to fund investigations by the States into the way medicine is being practiced, to ferret out those doctors who are practicing in a way that may be negligent, and to make sure they are subjected to disciplinary actions.

Mr. President, the bill also provides Federal leadership to strengthen health care quality in another way. The Senator from Vermont [Mr. JEFFORDS] has helped improve this amendment and bill in committee in this regard—by requiring the Agency for Health Care Policy and Research to convene an advisory panel to coordinate and evaluate methods, procedures, and data to enhance the safety and effectiveness of health care services. The panel will report on how to get better information into the hands of medical consumers, patients, so they can reward high-quality doctors and health plans with their business, let the market speak with full information and, of course, avoid risky practitioners or health plans that do not have adequate records in this regard.

It is part of the effort of the advisory panel to look at ways to strengthen the national practitioner data bank. It is a very helpful data base the Federal Government keeps on penalties, such as license revocation, taken by State licensing boards and hospitals against doctors who have or might put patients at risk, particularly doctors that may move from State to State. The data bank contains data on malpractice awards. These data are now available to hospitals and group practices, and it helps them screen doctors. Ultimately, I think we ought to make it available to the public as well. This amendment would set that process into motion.

Mr. President, many of the reform ideas in the Liability Reform and Quality Assurance Act were proposed and cosponsored by both Democrats and Republicans in the last Congress as part of a comprehensive health care reform effort. A number of those ideas were embraced last year by a group of us who participated in the bipartisan Senate so-called mainstream coalition.

We did not have a chance to debate those issues here on the floor in the last Congress. I am delighted that we now have that opportunity, and I am very proud to again join with the occupant of the chair, the Senator from Kentucky [Mr. MCCONNELL], in proposing this amendment, this underlying bill, which I believe is a genuinely moderate malpractice reform bill.

I hope my colleagues will join in supporting this amendment.

I yield the floor.

Mr. KYL. Mr. President, let me begin by complimenting the Senator from Connecticut for his very fine remarks in support of the legislation that we have introduced. I have had the pleasure to work for 8 years with his House colleague, NANCY JOHNSON, in the House of Representatives, who has been a leader in this area, and who has educated me and assisted greatly in the development of reform measures. I know that he shares with me his deep regard for his colleague and my former colleague from the House of Representatives, NANCY JOHNSON. I want to compliment both for the fine work that has been done in developing legislation and proposing it as an amendment to the underlying bill here today.

I support the McConnell-Lieberman amendment to the Gorton-Rockefeller product liability bill. As I have traveled around my own State of Arizona for several years now, the cry has been that we have too much taxation, regulation, and litigation.

There is simply a growing awareness by so many small business people, by so many other representatives of business or families, that there is something out of whack here. There is something out of balance in our society that is preventing America from competing, that is pitting citizen against citizen, that is removing the element of responsibility from our society, and most of all, hurting all as citizens and as consumers because of what some have called the litigation lottery.

I think that the Senator from Connecticut is correct that what the opponents of this legislation must argue is that the status quo works. Yet, I think that almost no person can deny that fundamental reform is necessary.

I practiced law for 20 years in my home State, Mr. President. I have a deep respect for the legal system as a result of that. Individuals who have been injured through the negligence of physicians or other parties do have their day in court. They are fairly, and I suggest, proportionately compensated for the injuries which are sustained as a result of the negligence of those who have treated them.

It cannot be suggested that people today are not permitted full and complete recovery and all of the opportunity the law brings for their recoveries. Clearly, a strong and equitable civil justice system is an essential component of a free society like ours.

Having said all of that, it is also true that what has served the few well, the injured plaintiffs well over the years, has come to ill serve society as it has gotten out of balance. The net result is that everyone as consumers are suffering as a result of the litigation lottery that I spoke of a moment ago.

The high cost of civil litigation and the excessive medical malpractice recoveries have greatly contributed both to the high cost of insurance and high consumer prices.

There is another way in which this explosion has hurt. It has hurt the doctor-patient relationship. As has been noted, a physician now treats in fear that what he does may result in a lawsuit, with the result that too many diagnostic services are ordered or prescriptions or other kinds of treatments are ordered, with the result that the costs go up.

The same kind of psychological well-being that a patient seeks from a physician is broken down when that physician sees the patient as a potential lawsuit. This is not good for either the physician community or for the individuals who are being treated.

In addition, the current medical malpractice system actually encourages litigation and resulting exorbitant out-of-court settlements. Let me cite some examples:

The Senator from Connecticut cited Lewin-VHI, a consulting firm, which in 1994, studied and concluded that the direct medical liability costs have been growing at four times the rate of inflation—four times the rate of inflation. I do not think we can suggest that somehow this system has simply kept up with everything else in society. It is exploding at the rate of four times the rate of inflation.

In 1998, according to the study, defensive medicine is projected to add $38 billion or more per year to national health care costs.

If we are going to talk about true health care reform, Mr. President, we cannot do so honestly, without addressing this issue. It is not the sole answer. There is much else that must be done. But clearly this is one of the things which must be done. To pretend that we can have health care reform without addressing this problem in the bill that has been introduced is to deny a fundamental reality of our society today.

The practice of defensive medicine, of course, is understandable. No one likes to be sued. According to a 1994 study by the Institute of Medicine, 40 percent of all physicians and 70 percent of all OB/GYN's will be sued during their careers.

Mr. President, I believe it was you earlier this morning who talked about the fact that in many communities we do not have any more OB/GYN's. We have GYN's, but nobody is wanting to deliver babies any more because of the large number of cases in which, when something has gone wrong or the baby is not perfect, the physician ends up being sued.

There are many communities in my own State that are no longer served by obstetric physicians because of this phenomena. Mr. President, it was discussed this morning, the number of communities, particularly smaller communities, in your State and around the country that no longer have this service.

So in order to bring this potential recovery in the litigation lottery for a very few, women all over the United States and families all over the United States suffer the consequences because their communities no longer provide this kind of service, and it puts a health risk to the people in the communities.

Mr. President, my wife was involved in the March of Dimes effort for several years helping to raise money for something they called the ''Mom mobile,'' a large van that would provide prenatal services in the outlying areas of our State where there were no physicians to provide those services anymore. Among the reasons is this problem that we are talking about here today.

Mr. President, also discussed was the extraordinarily negative impact that this has on the minority physician. I think, therefore, we all must recognize that when too many people are creating too much of a burden on the system, it affects all of America. It affects all Americans. When that occurs, we must acknowledge that something is wrong, that reform is necessary, and that it is not a matter of not wanting people who deserve to be compensated to recover. No one is arguing that. We are simply saying that we need to both permit their recovery, but also ensure that there are not excessive costs built into the system because the system has gotten out of balance.

With this matter of defensive medicine having achieved the degree of cost in our society that it has, I think it is undeniable that the problem has to be addressed.

Medical liability costs do not result in a productive use of our health care resources. Another study I would like to cite, the Competitiveness Center of the Hudson Institute, noted that of the billions of dollars spent on medical liability insurance, 57 cents out of each premium dollar goes to lawyers rather than to the injured patient.

This study also found that medical liability costs add $450 in direct and indirect costs to each hospital admission.

So where is the benefit to the people for whom we have so much compassion, who deserve to recover for injuries that they have sustained because of someone's fault when over half of the money goes to the system, goes to the lawyers? And these large costs are added to the hospitals and eventually, of course, to the insurance premiums, and when added to the other defensive medicine practices drive insurance costs up for everyone, preventing some people from being able to afford insurance.

In other words, again, millions of Americans are suffering because the system, which is designed to help the few who are injured, has gotten so far out of balance.

There is another study, a Rand study, which I believe has it somewhere in the neighborhood of 40 percent of the funds that are recovered going to victims and almost 60 percent going to administration or to the attorneys involved in the handling of the cases.

The Hudson Institute study that I referred to a moment ago concluded the fear of lawsuits contributes more than 5 percent to hospital operating expenditures. That is again part of defensive medicine, of which we have been speaking.

Ironically, our tort system also inhibits reimbursement for legitimate malpractice claims because of the high cost of retaining legal counsel and the length of time between the date the suit is filed and the resolution of the claim. In other words, these high costs have a tendency to snowball because of the cost of defense. The plaintiffs have to spend more time, their lawyers, so the costs of defending increase. That is another factor driving up the costs of the premiums. Again, that affects all of us and prevents some people from actually being able to be insured.

I just had to make one reference to a comment that the Senator from Minnesota made earlier today on the floor. He talked about compensation in the form of punitive damages. I think it is important to make it very clear that while punitive damages are a component of our legal system, they have a very narrow and specific purpose in a very limited number of cases. Punitive damages were never intended as compensation. Punitive damages were intended to act as a disincentive for bad conduct in the future, to punish someone who was so recklessly in disregard of the rights of others that that party had to be punished so that the bad act would not be repeated.

There is a lot of discussion of whether or not the punitive damages that are recovered should even go to the plaintiff, because they are not designed as compensation. You cannot get punitive damages unless you have already been compensated. That is the law. The compensation is in two forms. The so-called economic damages, which have two components: All of the medical bills and costs associated with the treatment and recovery for the injury, and the loss in economic wages or other cost factors associated with the effects of the injury on the injured party and the party's family. Those are designed to fully compensate for all of the dollar losses, past, present, and future.

In addition to that, because we are a caring society and understand that there is more than just dollar loss, we compensate for what are called noneconomic damages, or sometimes called pain and suffering. And this is just. This is fair. This is necessary.

We often say that no amount of money can compensate for certain kinds of injuries, and that is true. Yet, as a society, we recognize that some kind of payment is appropriate for those who have suffered. So we provide for that kind of compensation.

There may be an amendment later on that suggests that there needs to be an upper limit to that compensation; that beyond a certain amount, we are talking about a litigation lottery and not something that would reasonably compensate for this pain and suffering. That will be reserved for a later time. But that is not involved in the bill that you, Mr. President, have introduced, the Senator from Kentucky and the Senator from Connecticut have introduced.

As a result, I do not think we should be confused about this matter of punitive damages. By putting a cap on punitive damages, as this legislation does, we are not detracting from the compensation of the victim. We are simply adding a disincentive for further bad conduct. And there is a point at which you are not adding to the disincentive, by providing multiple punitive damages awards, for example.

I am confident that in the discussions we engage in here, ultimately a reasonable balance can be achieved that will both restrain the spiraling tort litigation costs and recoveries and also afford citizens injured through the negligence of others just and reasonable compensation. That is our goal.

I believe the amendment that has been offered here is a step in the right direction. I will not review the contents of the amendment. It has been well described by both the Senator from Kentucky this morning and a moment ago by the Senator from Connecticut. But it does reform the statute of limitations to make it uniform. It does cap the punitive damages. It provides for joint and several liability reform so, in effect, innocent parties do not end up paying the expense just because one of the so-called guilty parties cannot be found or is unable to economically respond in damages. And it also has a limitation on attorney's fees.

I guess I will just conclude by reflecting on that for just a moment. As I said, I practiced law for 20 years and I have a deep respect for the legal profession. It is very important that lawyers be adequately compensated in order to have the incentive to take cases. That clearly is a part of the contingent fee aspect of many of these kinds of cases.

But it is not too much, I think, to say that as we all begin to look on how we can reduce the cost of health care in our society, so that we do not have to resort to a kind of socialized medicine that many of us feared was going to be the result of the debate last year in the Congress, if we are going to reform it ourselves, then we have to look at a variety of things, including ways in which we can make it easier for Americans to buy insurance, to reduce the cost of health care, and a part of that is to reduce the overhead, including the attorney's fees that are involved.

To a point, it is necessary to provide an incentive to take the cases. But beyond that point, it again becomes a part of this lottery, when in these multimillion-dollar recoveries the attorney receives over half of what is awarded to the plaintiff. This amendment is an effort to try to return some balance and provide that a good share of the recovery, if there is a recovery, goes to the plaintiff, to the injured party, rather than to the system and to the lawyers.

So I am very much in support of the McConnell-Lieberman amendment, and I am hopeful when we have concluded the debate on this, there will be sufficient support in this body to approve the amendment so this bill can go to conference and, in conjunction with our House colleagues, develop a piece of legislation that the President can sign and finally get us on the road to reform in our litigation system in the United States of America.

I yield the floor.

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

Mr. SIMON. Mr. President, I rise in opposition to this amendment. I heard Senator KYL say this is one important issue in the whole issue of health care that should be addressed. And I agree with that. The difficulty that we face is we tend to go—and the Presiding Officer is a new Member here and he will see this in his years here—we tend to swing the pendulum from one extreme to the other, instead of finding a sensible middle ground.

I remember some years ago—maybe 8, 10 years ago—I had a dinner meeting with the president of the American Trial Lawyers Association and a few others, and I said, ''Let's try to see if we can find a sensible middle ground here.''

Unfortunately, I think at that point, many of my friends in the Trial Lawyers Association felt no change was necessary, nothing was needed. Now, the pendulum is going to swing much further than I think is in the national interest. And if we swing the pendulum way over here, it will not be too many years and the pendulum will swing back in the opposite direction too far, unless we can find a sensible middle ground.

The big issue is the reality that we have 41 million Americans without health care coverage. The most conservative estimate is that by the end of this century, just 5 years from now, it will be 50 million. No other Western industrialized nation has anything like that. In every other Western industrialized nation, everyone is covered.

If you live in Italy, everyone is covered. If you live in Denmark, everyone is covered, as you are if you live in Japan, if you live in Germany, Norway, Sweden, Great Britain, France, and so forth. We clearly have to do better by the citizens of our country.

But the question I face is a question in the State of Illinois where, in the Labor Committee the other day, I mentioned the Chicago Sun-Times story from February of this year, talking about the medical malpractice watchdog agency that ensures that we maintain quality care for the citizens of Illinois. My guess is what is true in Illinois is true in other States.

That watchdog agency is dominated by members of the medical profession. And the Chicago Sun Times aptly said the watchdog agency is ''not a watchdog. It is a pussycat.'' And they went into all the statistics.

Just as an example, 86 percent of the physicians who were found to be on drugs in the State of Illinois were given probation and 14 percent suspended for any amount of time at all. You are more likely to be suspended if you are a college athlete or a pro football player or basketball player in Illinois than if you are a physician where you are dealing with the lives of people. That just does not make sense.

I look at this bill. I say will this help? On the contrary. It reduces the penalties that may be available. They have the story of one physician who has now been sued 119 times for malpractice. They have had complaints. They went into some gruesome stories, and the State disciplinary board has done nothing. He has been sued not 9 times, not 19 times, but 119 times, and the State disciplinary board does nothing. Is this bill going to improve quality of care in Illinois? The answer, unfortunately, is it will not.

Yesterday a man named Jim Fairly from Illinois stopped by my office. He was walking with a cane. He had broken a hip, and had consulted a physician about a remedy. The physician, who had never practiced this type of medicine, recommended a prosthesis, which was unnecessary and which became infected, causing lifetime damage. He sued his physician and won. I do not think we should reduce the penalties in this kind of a situation.

Is there a problem? Yes. I frankly think what we put into the health care bill that came out of the Labor and Human Resources Committee last year dealt properly with it by reducing the awards to lawyers. I think that is the way you deal with it, not some of these other changes that are in here.

And in terms of punitive damages, it is very interesting. I see my colleague from Nevada on the floor. I cannot think of a single instance in my years in the House and the Senate—and I would guess he cannot think of a single instance in his years here —where we have reduced the penalty for anything, for any crime. We have increased the penalties for drug possession, selling drugs, use of weapons, all kinds of things, increased mandatory sentences, and everything else. Here for the first time in my 21 years in Congress we will be saying, even if you violate commonsense, humanitarian impulses, even if you as a physician or a hospital do not use due diligence in protecting the lives of people, we are going to reduce your penalty. I cannot think of another instance where we have done that. I just do not think it makes sense.

Limit punitive damages to $250,000? What about the hospital in Tampa, FL, which just a few weeks ago amputated the wrong leg of a patient? Should a punitive damages award there be limited to $250,000? Or the same hospital, ironically, because of not handling a situation well with a 77-year-old person, where a therapist disconnected the ventilator and the person died? Should punitives there be limited to $250,000? I do not know what damages should be, but I do not know why we should limit it to $250,000.

What about the Boston Globe health columnist—ironically a health columnist—39 years old, mother of two, who was administered an overdose of chemotherapy and she died? Or the story last week of the 8-year-old boy in Denver who went in for a routine ear operation and the person administering the anesthesia fell asleep and the boy died? Should we decree a maximum award of $250,000 on punitive damages? I do not think we ought to be doing that.

I also would add—I hope maybe that our colleague from Michigan, our new colleague, Senator SPENCER ABRAHAM, will introduce the same amendment he introduced in the Labor Committee giving the States the right to opt out of the Federal standard. Right now this amendment says States can be less firm, less tough, but you cannot be tougher than this bill. Senator ABRAHAM says let us give the States the option. I think that makes sense. Establish a standard, if you will, but give States the option. And the suggestion by Senator DODD that was accepted in our committee that a jury could find whether there are punitive damages, and then the judge would assess the damage, should also be restored.

There are other problems here. One is a problem suggested by the Supreme Court decision yesterday, a 5-to-4 decision. I happen to disagree with it. But it says you cannot limit guns near a school. They said this in a 5-to-4 decision. You cannot limit guns near schools because you are not dealing with interstate commerce. What about a physician who takes off the wrong leg of a patient? Is that interstate commerce? I think there is a real question on that.

I do not think this has been touched upon in the debate so far, but this bill does away completely with joint and several liability for noneconomic damages. I do believe that is an area that ought to be changed. If you are 1 percent responsible, you should not have 100 percent of the damages assessed against you. But to simply eliminate all joint and several liability in this area makes no sense at all.

Finally, I would add, the amendment offered by Senator THOMAS from Wyoming on the question of obstetrics practices, it is dealing with a real problem, but I think it provides a standard that we don't normally require in civil cases, and it is a standard that is much too severe. I would be pleased to work with him and with the others in this body to see that we get health care in rural areas. It is a real problem. I think this is the wrong way to deal with this problem.

Finally, again, Mr. President, I would just remind this body that we should not be going from one extreme to another. We ought to find a sensible middle ground. This is not a sensible middle ground. If this passes and if it should be signed by the President —and I hope the President will not sign it if it passes—but if it should be passed and be signed by the President, then inevitably there are going to be enough abuses that we will see the pendulum swing way back in the other direction. I think we ought to try to fashion a good, sensible, middle ground, bipartisan agreement. And I hope somehow out of the coalitions that take place on this floor we can move in that direction.

Mr. President, I do not see anyone else here seeking the floor. I question the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McCONNELL. Mr. President, several of our colleagues made some assertions earlier in the debate today on the underlying amendment that I would like to respond to.

First, the number and frequency of health care liability claims is, in fact, increasing. This is not in dispute. It

cannot be because we are turning out more doctors who commit more negligence. It is, in fact, the prospect of a willful verdict or a settlement that encourages people to sue.

According to estimates based on the AMA physician masterfile and other liability data from the AMA, the average rate of claims have increased every year since 1987.

Let us just look at the 3-year period from 1991 to 1993. In 1991, 33,424 medical professional liability claims were filed. In that year 1991, 33,424 medical professional liability claims were filed. In 1992, 38,430 claims; in 1993, 42,828. In just a 2-year period, the number of claims jumped by 28 percent.

As far as the assertion that malpractice insurance costs are not increasing, the data shows otherwise. While premiums stabilized in the late 1980's, rates are starting to climb again.

According to the Medical Liability Monitor, more than half of the doctors have experienced, for both 1993 and 1994, in the area of 9 to 15 percent increases, far in excess of the inflation rate.

As for the assertion that 80,000 people die each year from malpractice, it is just not true. That claim is made by the Consumer Union based on a 1991 study done by Harvard. Harvard researchers studied New York City in 1984, 1 year. Of the 51 hospitals studied in that year, 1984, they found 71 deaths out of 31,000 patient records where malpractice was the reason for death. There is simply no statistically sound way to get 80,000 deaths nationwide from 71 deaths in New York City in 1984. In other words, Mr. President, let me repeat. There is just no statistically sound way to get to 80,000 deaths nationwide from 71 deaths in New York city in 1984 alone.

The Harvard researchers themselves rejected the Consumer Union conclusion during last year's health care debate. In fact, that was in a letter to Representative PETE STARK.

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

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

Mr. FRIST. Mr. President, I rise today to express my support for the McConnell amendment before us. As the Senator from Kentucky has stated, it reflects the work of the Committee on Labor and Human Resources. We worked cooperatively on this product. The committee held hearings last month to review the issues of medical malpractice in greater depth.

As I understand the amendment of the Senator from Kentucky, this bill does not include two of the amendments that were brought forward during our committee markup. I would like to point out that one of these amendments was omitted with the agreement of the Senator who authored the amendment, and the other related to punitive damages.

Mr. President, this country needs legal reform. We are now, by far, the most litigious country on Earth, and we are paying a huge price as a result.

I speak today as a physician and as a U.S. Senator—as a physician who has practiced for the last 17 years, every day, taking care of patients, one on one. As a physician, I have seen firsthand on a daily basis the threat of litigation and what it has done to American medicine. I have watched my medical colleagues order diagnostic tests that were costly and unnecessary to the diagnosis or to the care of a patient, and they are ordered for one purpose: To create a trail—in many cases a paper trail—to protect them in the event a lawsuit were ever to be filed. It is called defensive medicine, and it happens every day in every hospital across America. It alters the way medicine is practiced and it is wasteful.

So who pays for all of this? The American people do. Insurance companies simply pass these costs along in terms of higher premiums. Physicians, providers, hospitals pass the costs along in the form of higher health care costs, all of which contribute to making overall health care more inaccessible.

Rural providers have a particular problem. They have nowhere to shift these increased costs. In my own practice, I practiced in a large academic institution. I had a large patient base. I had a good mix of payers to share these costs. However, the rural physician—and we have seen this specifically in the field of obstetrics, obstetrical care in rural areas—the rural physician has nowhere to go. As a result, the rural doctor either decides to cease services in areas of medicine where litigation risks are high, or worse, but all too often, the rural doctor simply packs up and goes somewhere else where the cost can be spread over an adequate population base. The result hurts these rural areas. There is a maldistribution of physicians, and this contributes to that maldistribution. The result threatens, again, both access and quality of care in this country.

Every State has passed some type of medical liability reform. However, these reforms vary widely. The McConnell amendment serves to establish national minimum standards such as a uniform statute of limitations. Some of my colleagues have expressed concern that this bill preempts State laws.

Mr. President, I would like to address the issue of States rights. We, as policymakers, must determine what and when the Federal role is appropriate. In the case of civil justice reform, the Federal role is to respond to the failures of the system and to respond to the impact on overall health care costs. As a physician, as one who deals daily with patients, one on one, who has devoted his life to caring for individuals, this system is failing and we need to respond appropriately.

Medical liability judgments have tripled since the 1970's. Yet, less than half of the billions paid in medical liability rewards each year actually go to the injured patients.

If we fail to reform the malpractice system, we fail the victims of malpractice. The amendment before us will not prevent a plaintiff with a meritorious claim from suing and recovering; it will in fact improve his or her chances. The courts will be clogged with fewer spurious lawsuits in cases that now lag on for 1, 2, 3, 4, or more years. They will move more quickly.

In closing, I fully support this amendment. It will make our civil justice system more responsible, more accessible, more predictable, and most important, more equitable. As a physician, I truly believe that better medicine will be practiced, to the benefit of each and every American.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ABRAHAM). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, I am concerned about the circumstances under which the underlying McConnell amendment is being considered. The Labor Committee considered this very language earlier this week. Yet, two of the amendments passed in committee have been stripped from this version of the bill.

So what is the point of the committee process if in looking at these things deliberatively, investigating them, if the product of the committee actually is dropped? I might add it has been dropped in a matter of 1 day. Even the bill that passed the committee was too extreme a measure to receive my vote, but it was at least better than the amendment we have before us.

Mr. President, it is clear that medical malpractice liability is having an impact on health care costs and on the availability of medical services, especially in rural areas. I have had a number of physicians and hospital groups come into my office to express concern about the costs of malpractice premiums and defensive medicine.

I would like to speak about the Thomas amendment that is now before the Senate. I understand the concerns of my colleague from Wyoming.

Over the years I have fought hard to recruit and maintain health care providers in rural areas. We changed Medicare reimbursement for physicians practicing in rural areas. I have been a strong supporter of increasing Federal support for telemedicine that helps providers in rural areas. What's more, I

have been a long-time supporter of the National Health Service Corps.

Clearly, we have not done enough to get physicians in rural areas. During the health care debate, I supported a whole range of provisions to increase the number of providers in our rural communities. So this is a goal I support strongly.

But I believe that the Thomas amendment before the Senate is the wrong way to go in trying to get more physicians in rural areas. The procedure adopted by the Senator from Wyoming is overly broad and unnecessary. The usual liability standard that applies to a physician who has never seen a patient before is to act as a reasonable physician would under the circumstances.

It is unnecessary to raise the evidentiary standard to clear and convincing. This action would create a unique, protected class out of all potential defendants.

Black's Law Dictionary says that clear and convincing proof is proof beyond a reasonable—that is, well-founded—doubt. The level of proof is extremely high.

So Mr. President, if we adopt the Thomas amendment, we would have one class of providers, OB/GYN's who saw the woman for the first time when they delivered the baby. This is the narrowest of the narrowest of the narrowest of classes. We would say in that one specific case that the evidentiary standard would have to be clear and convincing. All the others, of course, are a preponderance of the evidence.

Again, it makes no sense to do this because the same standard should apply for all physicians; that is, reasonable care under the circumstances.

As long as the OB/GYN delivering the baby has, in fact, utilized procedures that are reasonable under the circumstances, then that physician cannot be held liable. It is when they do not use procedures that are reasonable under the circumstances that they may become a potential defendant.

My concern extends beyond the Thomas amendment, however, to the whole area of medical malpractice. Studies have shown about 1 percent of all hospital patients suffer from that sort of negligent injury. Many of them do not receive compensation for those injuries from any source.

However, three to five times as many cases are filed where the patient suffered no compensable injury or where the injury was not negligently inflicted. The policymakers need to address how to reduce the number of claims brought with no good reason while assuring justice for the claims that are justified.

However, the McConnell amendment does not do that. Instead, it is clearly anticonsumer and would move America in the wrong direction. This bill would impact those with the clearest cases of injury who are being undercompensated under the current system and would not reduce the number of cases brought when no compensable injury occurred.

Some suggest that this bill would reduce the cost of medical malpractice. Unfortunately, that is not the case. The only way to reduce the real cost of medical malpractice in financial and human terms is to reduce the incidence of medical malpractice. Once the malpractice occurs, the only question being determined by the courts is, Who should bear the cost? Should it be the injured patient or the people or the institutions that inflicted the injury?

While malpractice events are very rare, it is clear that when these events do occur, the party responsible should make the party whole. We should attack malpractice the same way we fight highway accidents. No one, I believe, has suggested that the way to reduce the cost of motor vehicle accidents is to make it harder for people to get compensation. Would any reasonable person argue that we can cut down the number of highway accidents if we only make it harder for people to get compensation for those accidents? I do not think anyone could make that kind of an argument.

We have, however, reduced costs by making vehicles safer by the use of seatbelts, by vigorous enforcement of drunk driving laws, and by raising the drinking age, among other actions. All of these attacked costs of accidents by preventing the accidents from happening in the first place. This bill does little to help get the small number of physicians who are repeatedly found liable for malpractice out of the operating rooms and out of their medical offices.

Further, we are in different circumstances this year than last. If the Federal Government is going to develop a comprehensive national health care strategy, it would be appropriate to consider malpractice reform as one aspect of that strategy. However, a freestanding bill such as the one before the committee today—that is, the amendment before the committee today—is an unjustified interference with a matter traditionally under control of the States, with no strong Federal regulatory interests.

I find it quite curious that the very people who are arguing everything else should be turned over to the States, in this instance say the Federal Government knows what is best.

I am not one of those who say that it ought to all be one way or all the other way. I think there are some areas in which the Federal Government's interest is prevalent; there are others in which the State government's interest is prevalent.

When I look at questions of Federalism, I base my approach on whether something ought to be done by the States or the Federal Government by looking at the past, whether or not there is any overriding reason why things should be changed from what we have done in the past.

For instance, for the entire past history of the United States, product liability malpractice cases compensation has all been under the jurisdiction of the States. I now see no overriding reason why the Federal Government must now step in. States can handle it, and they have handled it and they are handling it, and they ought to continue to handle it.

Again, I have in the past supported civil justice reforms in instances where a convincing Federal connection has been shown. I believe such was the case in the general aviation product liability reform bill introduced by Senator KASSEBAUM, and which I voted for last year. It did pass and was signed into law by the President. I believe there was an overriding Federal interest.

However, in this instance I see no convincing reason to deprive the States of their traditional role.

I think, Mr. President, that when we look at medical malpractice we really have to separate fact from fiction and understand the mythology that is out there. About 1 percent, as I say, of hospital patients become victims of negligent medical injury. That is not very many, 1 out of 100. Roughly half of those are very minor. But about a quarter of them result in death or serious disability.

The Harvard Medical Practice Study estimates that about 150,000 patients die annually as a result of medical mishaps. About half of those deaths due to negligence.

Of patients who suffer negligent injuries, only about 2 percent file claims for compensation. I think that is very important. Of all of the patients who suffer negligent injuries, only about 2 percent file claims for compensation, and many of these will receive no compensation at all for their injuries. Of those who do, the compensation on average is less than the economic losses suffered. More precisely and more perversely, as the size of the losses goes up the fraction covered by the settlement or award goes down. That is, those who suffer the least serious injuries generally receive compensation two or three times their actual losses. But those who suffer the most devastating injuries and losses receive compensation equal to only a fraction of the losses they have suffered.

On the other side of the ledger, cases of nonnegligent injuries—noninjuries—the 99 percent of hospital patients not entitled to compensation under the law, the best estimate was that about 0.8 percent of these people file claims for compensation. About 0.8 percent. What we are saying is for every valid claim brought there are three to five filed that should not be. Most of those are dismissed somewhere along the litigation process.

This is a system, I think, in which there has been a lot of myth and a lot of misunderstanding. The tort liability system provided compensation of only about $7.7 billion, according to a Rand Corporation study, about 4 percent of

the total. They pointed out in a recent year Americans suffered about $175.9 billion in direct losses. The tort system only compensated for $7.7 billion of that. So, as an accident compensation system, the tort system really does not do a very good job, frankly. But it may yield a very powerful deterrent effect. Perhaps that is really the basis for keeping the tort system, because we do want to send a strong signal that people have to act prudently. People have to act reasonably. People cannot act negligently. And if they act negligently then they have to be responsible for their actions.

We hear a lot of talk around here about responsibility. I introduced a welfare reform bill today. A lot of people talked about responsibility on behalf of welfare recipients. I agree with that. But I think people ought to act responsibly, and if they do not act responsibly and people get injured then the people who acted negligently have to be held accountable.

This is not a new concept. As I stated earlier, this goes back in common law for hundreds of years. I think it has provided in our country, and in Great Britain, a system that does engender responsibility. So that is really what we are talking about. We should not turn our back on centuries of practice without good cause.

In the area of medical malpractice I agree there are some problems, and I may offer amendments dealing with some of them. But I would proffer this question to those who want to drastically change the medical malpractice system, the tort liability system, as we would under the McConnell amendment and the Thomas amendment thereto. I would question, then, if we really want to lose the quality of care that Americans have come to reasonably expect in our health care system.

I do not think anyone doubts that we have a very high quality of care. We may lack access in rural areas and other areas, and we may lack coverage of certain people, but no one can doubt that the quality of care of our health care system is very high. I heard speech after speech last year, on both sides of the aisle, about how we do not want to denigrate in any way or reduce in any way the quality of care. We want to keep a high quality of care. We want to do whatever we can to promote a higher quality of health care in this country.

My question, then, to those who would change the medical malpractice tort liability system is how are you going to keep a high quality of care if those who are the practitioners of medicine are told that if they act negligently and without reasonable care and concern, they do not have to worry, that they are not going to be held liable, because there will be limits on recovery. Or in the case of the Thomas amendment, which would require a mother to prove her case of malpractice by clear and convincing evidence—what would that do to the quality of care? That is missing in this debate. I was listening to the others talk today earlier. I think we have to bring it down to that. If we want a high quality of care we better hold those who practice medicine to a very high standard.

Doctors are perhaps the highest compensated of any profession in our country, and I do not deny them that. I could not be a doctor. I have said many times that those who practice medicine, God bless them—especially in rural areas where they are on call 24 hours a day, 7 days a week—frankly I do not think they get paid enough, many times. So I am not saying they should not be paid well—they earn it in most cases.

What I am saying is that they are well compensated and we should hold them to a high quality of care. I do not know of any doctor who would purposely inflict injury or damage on a patient. I suppose there may be a twisted mind out there somewhere that would do that, but I do not believe that is the case. But there are those who may be in a hurry, they may think ''I will cut a corner here, cut a corner there. It will be all right. Maybe I will not have to do this procedure.'' When in fact there is a set procedure, there are standards to which doctors are supposed to adhere. And if they adhere to those, if they act in a reasonable manner under the circumstances, they are not liable. They are not liable for what happens to an individual because of unforeseen circumstances, things beyond their control.

There is not a jury in this country, I do not believe, that would convict a doctor or a hospital if something happened to a patient that was totally beyond their control, unforeseen. It is the things that are in their control that can be foreseen—it is that lack of due care and diligence—that causes tort feasors to be held accountable and liable.

Again, we get back to this quality of care. We want to keep a high quality of care and therefore we want our medical practitioners to be highly trained, highly qualified. We want them to continue their education, their medical education; to be recertified all the time. And we want to make sure when they practice medicine they adhere to the highest possible standards.

One way to do that is to say, ''Look, if you do not, you are going to be held liable in a tort liability system that has been time-tested over 600 years to make sure people do in fact act responsibly.''

Mr. President, I read over some recent malpractice cases. I think, if you read them, what you find is that these are people like you and me. These are people, ordinary citizens, going on about their business. Yet, the medical practitioners who treated them did not adhere to reasonable procedures under the circumstances and are liable.

I think there is always concern when any of us go to a hospital and are put under a doctor's care. We put a lot of faith and trust in our doctors, we really do. And 99 percent of the time, that trust is well placed. I think, as Senator WELLSTONE said earlier, one rotten apple can spoil the basket. It could spoil the basket even more if we do not have a tort system that holds these people accountable.

I sum up by saying the Thomas amendment is way out of the ballpark because it exempts a very narrow class from being responsible at all. The McConnell amendment takes the malpractice bill that passed the Labor Committee just 2 days ago, strips out the amendments that were offered, and then offers it as an amendment on this bill. As I said, I could not even support the bill as it came through the committee even with the amendments. Now this makes it even worse.

So I assume motions will be made to table the Thomas amendment and the McConnell amendment. I hope those motions are successful. I think the quality of care, especially the quality of health care in this country, would drop precipitously if either one or both of those amendments were adopted.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. KASSEBAUM. Mr. President, I rise in strong support for and to offer a few remarks on behalf of the amendment put forward by my colleague Senator MCCONNELL, Senator LIEBERMAN, and myself.

I think this amendment is a moderate, measured approach to medical liability reform. It is very difficult for us to debate any type of liability reform in the Congress, in the Chamber of the Senate or in the House of Representatives, without getting into worst case scenarios. There is none that we are more sensitive regarding, I think, than medical liability reform.

I have a great deal of confidence in the Senator from Kentucky [Mr. MCCONNELL] and the Senator from Connecticut [Mr. LIEBERMAN], who have spent a lot of time trying to bring forth the difficult aspects of this issue in the most acceptable consensus that really does give us some successful and constructive results to a problem that really troubles everyone in one way or another.

I know that we have already heard some of the specific provisions of the McConnell amendment, but if I may, Mr. President, I would like to reiterate some of them that I think are particularly useful and important to remember. One, that there is full recovery of economic and noneconomic damages.

The amendment allows injured patients to recover complete compensatory damages. It places no limitations on the amount claimants may recover for economic damages such as out-of-pocket medical expenses, rehabilitation costs, lost wages, cost of domestic services, and noneconomic damages such as pain and suffering, mental anguish, and loss of companionship. The amendment that is before us currently contains a cap on punitive damages of $250,000 or three times the economic losses, whichever is greater.

I understand there are discussions ongoing now with Senator SNOWE and others about punitive damages. I would just like to say for myself, Mr. President, whatever agreement can be reached—I think Senator MCCONNELL as well is a party to this—if we can reach an agreement with the chairman, Senator GORTON, on what type of punitive damages language we would want to have, I think there would be strong support for that. So that is still ongoing and debated.

There is a limit on attorneys' fees to ensure that injured patients recover a greater share of their medical liability awards. The attorneys' contingency fees are limited to 33⅓ percent of the first $150,000 award and 25 percent of awards in excess of $150,000. This is identical to the provisions contained in the bill that Senator KENNEDY introduced last year.

There is also the State alternative dispute resolution. Many in the legal profession and outside the legal profession believe we need to do more to encourage alternative dispute resolution, to promote the resolution of claims in a more convenient and timely—and let me stress timely—manner because years can go by in which most of those who need assistance are frequently tied up in the courts waiting to see what happens. This will be a means of getting a more timely redress and in an affordable manner.

The amendment encourages States to experiment with the alternative dispute resolution and requires the U.S. Attorney General to provide technical assistance to States regarding various ADR mechanisms.

Finally, thanks to the contributions of Senator JEFFORDS, the amendment requires the Agency for Health Care Policy and Research, in consultation with public and private sector entities, to establish guidelines on quality assurance, patient safety, and consumer information.

This is a small step in the right direction and one that has to be taken with some care, but I think we would all agree that a better means of obtaining information for consumers would be beneficial and useful.

Much has been said in the Chamber today both pro and con, and I do not like to be repetitive, but I think there are some things that are worth repeating. While we have different thoughts on this, I think all of us are struggling to find some better means of addressing tort reform and answering the problems that exist today in a society in which we have all become so very litigious, that as we weave this web of ever greater litigiousness, I think we are doing a great disservice to those perhaps most in need of redress in the courts.

The current liability system carries great human and economic costs. It does not work well for anyone—not for doctors, not for hospitals, not for families, and not for injured patients.

Under the present system, it takes an average of 5 years from the time a patient is injured to resolve a malpractice case. That is really inexcusable.

The Rand Corp. has found that only 40 cents of every dollar spent in medical liability litigation reaches injured patients. The rest goes to court costs and attorneys' fees.

The United States has the world's most expensive tort system. At 2.3 percent of GDP, U.S. tort costs are substantially higher than those of any other country and two and a half times the average of all developed countries.

The Harvard Medical Practice Study, based on a review of 31,429 medical records in 51 New York hospitals, found that only 1 in 16 injured patients actually received compensation. On the other hand, the study concluded that half of the malpractice claims that were filed were without merit.

Moreover, according to a 1992 survey by the American College of Obstetricians and Gynecologists, 12.3 percent of the OB/GYN's nationally gave up obstetrics in 1992 as a direct result of liability concerns.

I know in my own State of Kansas, it is becoming increasingly difficult, if not impossible, to find obstetricians and gynecologists who will go into the smaller, more rural communities because of the high cost of insurance that they must carry versus the number of patients that they may see. So it becomes an increasingly difficult problem in ways that we perhaps do not realize.

I would just like to say a few additional words about the preemption provisions of the McConnell amendment. I know this is a concern to some and I am sympathetic to that. How far do we go at the Federal level to preempt the various State laws that provide, in this case, guidance for litigation?

I do not believe there is a need for absolute uniformity in this area. But I do believe it is important to set some very clear, minimum Federal standards that all States must meet.

Let me just explain why I think that is important.

The amendment does not preempt States from going further with medical malpractice reforms that they may decide are necessary. They may go further.

California, for instance, now caps noneconomic damages at $250,000. I think this is the best way to balance the need for some State flexibility with the need for greater certainty and predictability in the system.

When I mention California capped noneconomic damages, let me just reiterate, this amendment does not cap noneconomic damages. But California would not be preempted because it would go even further.

What this does, to a certain extent, is set a floor below which there could not be changes made and, therefore, it adds a certainty and a predictability that I think will enable cases to be resolved in a timely fashion. Without some sense of specificity, I think we lose this timeliness, lose the ability to move the process forward.

I believe that setting a minimum level of medical liability reforms is necessary to continue development of a cost-effective private health care system.

Moreover, there is a direct and compelling Federal interest in reforming our outmoded medical liability system. One-third of the total health care spending in this country is paid by the Federal Government through Medicare and Medicaid Programs.

Finally, as my colleague, Senator FRIST, knows perhaps better than anyone else in this body, health care services are increasingly becoming regional, if not national. Senator FRIST from Tennessee was a surgeon prior to his coming to the U.S. Senate.

For example, some of the finest medical facilities in the United States, such as the Mayo Clinic in Minnesota, Stanford University in California, Barnes Hospital in Missouri, and the Cleveland Clinic in Ohio—and I do not want to leave others out—are examples of important regional centers that treat patients from across the Nation and around the world.

That is why, it seems to me, the more we can begin to start with some very important but moderate approaches to medical liability reform, I think we take a big step forward in assuring not only the access and timely access to redress, but we also provide the stability and some assurance of what actually is out there in the way of costs.

It should not, in any way, close the doors to those who need redress in the courts. But it should make us all mindful of being able to change the system that is getting out of hand. And in our own responsibility, whether it is here on the floor of the Senate or individually, we have to address and take responsibility for a growing environment that I think creates problems for each and every one of us.

Mr. President, I would just like to strongly urge my colleagues to support the McConnell-Lieberman-Kassebaum amendment. I know that we have a somewhat bumpy path ahead on this, but I am hopeful that we can move forward with the debate. Those who object have laid out some of their objections. But I think it is time for us to vote and move forward and get to the heart of the matter.

Thank you, Mr. President.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I should like to say how much I appreciate the thoughtful presentation of my colleague, usually seatmate, the chairman of the Labor Committee, on which I serve, the Senator from Kansas, in this connection. She has felt the necessity of moderate, not extreme, reforms in medical malpractice legislation for many years. And she now, I believe, has had the first opportunity ever to discuss legislation of that sort on the floor of the U.S. Senate. I strongly suspect it may not be the last such time, but it at least marks a thoughtful and balanced beginning presentation of a serious challenge to our entire health care system.

Mrs. KASSEBAUM. Mr. President, I thank the Senator from Washington. Senator GORTON has provided, I believe, a very important vehicle in his product liability legislation to which we are wanting to add this amendment and want to do so in a constructive way that will be an addition to the product liability bill before us.

I know that Senator MCCONNELL, Senator LIEBERMAN, and myself want to do all that we can to be supportive of the product liability bill and we want to work to make any changes in the medical liability reform amendment that would fit with the broader product liability bill. To that end, I think, as the Senator from Washington knows, we will do all we can to be helpful.

Thank you, Mr. President.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KOHL. Thank you, Mr. President. I rise today as a supporter of product liability reform to discuss an important issue which this reform effort has so far failed to address and I believe should be addressed.

The problem is excessive court secrecy. Far too often the court system allows vital information that is discovered in product liability litigation and which directly bears on public health and safety to be covered up, to be shielded from families whose lives are potentially at stake and from the public officials that we have appointed to protect our health and safety. All this happens because of the so-called protective orders, which are really gag orders, issued by courts and which are designed to keep information discovered in the course of litigation secret and undisclosed.

Typically, injured victims agree to a defendant's request to keep lawsuit information secret. They agree because defendants threaten that without secrecy, they will refuse to pay a settlement. Victims cannot afford to take such chances, and while courts in these situations actually have the legal authority to deny requests for secrecy, typically they do not, because both sides have agreed and judges have other matters that they prefer to attend to.

So, Mr. President, secrecy has become the rule in civil litigation, even though it causes harm and suffering to millions of other Americans. For example, 1 million women who received silicon breast implants in the 1980's were denied crucial information demonstrating the hazards of implants. The information was uncovered in a 1984 lawsuit, but it was kept secret by a court order until 1992. So what do we say to these women? How do we, as a civilized society, justify the secrecy orders that prevented them from making informed choices about what they were putting into their bodies?

What do we say to the scores of young children injured while playing on defective merry-go-rounds that remained on the market for over a decade because many lawsuit settlements concerning this sickening product were kept secret from the public and from the Consumer Product Safety Commission. These children, most of them under 6 years of age, lost their fingers, their hands, and feet.

Another case involves Fred Barbee, a Wisconsin resident whose wife, Carol, died because of a defective heart valve. We learned in a Judiciary Committee hearing more than 4 years ago from Mr. Barbee that months and years before his wife died, the valve manufacturer had quietly, and without public knowledge, settled dozens of lawsuits in which the valve defects were clearly demonstrated.

So when Mrs. Barbee's valve malfunctioned, she rushed to a health clinic in Spooner, WI, thinking, as did her doctors, that she was suffering from a heart attack. As a result of this misdiagnosis, Mrs. Barbee was treated incorrectly, and she died.

To this day, Mr. Barbee believes that but for the secret settlement of heart valve lawsuits, he and his wife would have been aware of the valve defect and his wife would be alive today.

As a last example, Mr. President, let me tell you about a family which we must call the Does because they are under a secrecy order and afraid to use their own names when talking to us. The Does were the victims of a tragic medical malpractice that resulted in serious brain damage to their child. A friend of the Does is using the same doctor, but Mrs. Doe is terrified of saying anything to her friend for fear of violating the secrecy order that governs her lawsuit settlement. Mrs. Doe is afraid that if she talks, the defendant in her case will suspend the ongoing settlement payments that allow her to care for her injured child.

What sort of court system prohibits a woman from telling her friend that her child might be in danger? Mr. President, the more disturbing question is this: What other secrets are currently held under lock and key which could be saving lives if they were made public?

Last year, during debate on the product liability bill, we began a discussion about court secrecy reform, and we should continue that discussion today. I favor a simple change in the system that would not prohibit secrecy but merely send a signal to judges to more carefully consider the public interest before drawing the veil of confidentiality over crucial information.

That change would work as follows: In cases affecting public health and safety, courts would apply a balancing test. They could permit secrecy only if the need for privacy outweighs the public's need to know about potential health or safety hazards. This change in the law would ensure that courts do not carelessly and automatically sanction secrecy when the health and safety of the American public is at stake.

At the same time, it would still allow defendants to obtain secrecy orders when the need for privacy is significant and substantial. The court secrecy reform I have suggested is not antibusiness. Business people want to know about dangerous and defective products, and they want regulatory agencies to have the information necessary to protect the public.

And so in summary, Mr. President, the product liability bill that we are debating today is all about striking a better, more reasonable balance between plaintiffs and defendants in product liability lawsuits. The change that I propose in our court secrecy laws is also about striking a better balance in product liability lawsuits, a better balance between the private parties involved in litigation and the millions of American consumers who today are being kept in the dark in many cases because of court secrecy.

I hope my colleagues who support product liability reform will recognize the need to deal with this very serious issue. Reform, after all, is a two-way street. I thank the Chair and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GREGG). The clerk will call the roll?

The assistant legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. KOHL. Mr. President, I ask unanimous consent that my Judiciary Committee law clerk, Julie Selsberg, be given floor privileges during the debate on the product liability legislation.

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

Mr. KOHL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I rise this afternoon in support of the McConnell amendment to the Product Liability Reform Act that is now being considered before this body. If there was one thing that was made clear last year during the health care debate, it was a need for medical malpractice reform, not just to curb the need for defensive medicine—and some still argue about the extent to which that contributes to our rising costs in medical care—but to get a handle on this incredible amount of litigation our society now seems to take part in.

In Montana I have talked with several of our rural doctors who, through no fault of their own, have outrageous malpractice premiums. I recently had a primary care doctor in my office who pays $38,000 a year in premiums. To those folks who practice in more urban areas and have extended practices, $38,000 might not sound like much. But it is a big ticket in a rural State. To top that off, he is yet to be sued. But, yet, to protect himself, he cannot avoid paying this premium. Of course, we know who pays for that—the people who use his services. On top of this cost of practice, he has overhead expenses, too. It is no wonder the cost of services and fees continues to go up. In fact, I was astounded to find out the other day from a group of doctors what an office call would cost if it were not for a lot of extenuating rules, regulations, insurance, and, yes, Government regulations in their life, and how that increases just the price of an office call.

The McConnell amendment is a perfect fit on this product liability reform bill. I am glad to see the House has included it and that this body is considering it now. The product in this case is health care services. I am not trying to say that people do not deserve malpractice awards. As in any business, people are fallible, judgment is not always true, and accidents do happen. I think we tend to hold health care providers to a higher standard because much of the time they hold our lives in their hands.

But malpractice claims are made more often than necessary. Of the billions of dollars spent on medical liability, 50 cents of every premium dollar goes to the attorneys and not to the injured patients that this system was meant to help. If our goal is to direct health care dollars into the legal system for the attorney fees and court costs, then we should not enact liability reform. However, if the patient is our priority, and if quality of care is important to us, then this provision is essential.

One area that I am very interested in is the contingency reform provisions in this amendment. This provision will help to address some of the sizable costs in the system by limiting an attorney's contingency fee to 33⅓ percent for the first $150,000 and 25 percent of any amount over $150,000. The real travesty of justice here is the amount of the health care liability award that goes to the attorneys. The contingency fee was intended to be the poor man's key to the courthouse. According to the evidence from a 1990 Harvard medical malpractice study in New York, the contingency fee is not serving this function very well.

Most folks with small health care injury claims never get access to the civil justice system because the contingency fee stimulates lawyers to be primarily interested in the big ticket cases. It is the same incentive that drives the lawsuit lottery, encouraging lawyers to take cases with a sympathetic plaintiff even if there is no negligent care. In many States, the contingency fee is growing. Though traditionally the norm is one-third of the plaintiff's payment, the standard is growing to 40 percent and, yes, 50 percent contingency fees are becoming more and more common. This fee covers only the attorney's professional fee. Litigation expenses are deducted separately from the plaintiff's recovery and they, too, can be quite high.

I am proud to say that the Montana Legislature has just passed legislation to cap the fee and reform our medical liability system, the Montana State Legislature that just adjourned prior to the Easter break. I take my lead from my constituents. I always have and I always will. But I also keep a pulse on what is going on around the Nation.

In a recent public opinion strategist poll linking people to groups that represent America's values, I tell you what, attorneys, kind of with us, are running pretty low. But for the sure reason for that, maybe we should examine the system. Incidentally, doctors were near the top of the poll.

So I urge my colleagues to support the McConnell-Kassebaum amendment. After all, it was just a couple of years ago that Senator KASSEBAUM worked on a medical plan, and this was included in her plan then so this is not a new idea. It is an idea that has been accepted by the American people and it is an idea whose time has come. These two amendments together will meet the needs of the injured patients who deserve to be fairly compensated and society which needs to reduce transaction costs and eliminate windfall judgments. But above all, it will allow us to continue to promote the highest quality medical care for our people, our consumers in this country, and maintain that high quality for years to come. It is very important that this be a part of this package whenever we go to conference and when it becomes law.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I wish to review for the Members where we are this afternoon on the malpractice insurance proposal offered by Senator MCCONNELL, and now added to by Senator KASSEBAUM.

Process is really not always important, but the Senate has a process to ensure adequate consideration to measures such as these. We will have a chance to revisit the substance of some of these measures during the course of consideration of the McConnell amendment. But since I referred earlier to the actions of our committee, I wanted to at least give the Senate an idea of what we have been doing, and what the result of our deliberations has been.

The amendment described by the Senator from Kentucky is not the product of consideration by the Labor and Human Resources Committee. That committee, under the chairmanship of Senator KASSEBAUM, spent a full day this week and half a day earlier this month debating a bill virtually identical to the amendment Senator MCCONNELL has offered today. Members heard each other's arguments, compared their experiences in their own States, and worked in a collegial and good-faith fashion to craft a better bill.

Three very important amendments were adopted. First, there was an amendment offered by Senator DODD that removed the cap on punitive damages, providing a more structured process by which the jury determines whether the punitive damages are warranted and the judge sets the amount.

Now, I just want to mention that punitive damages in malpractice cases are extremely rare. However, of those cases that do merit punitive damages, 68 percent involve sexual abuse of patients by the medical profession. So in addition to a very high standard that was established in the McConnell bill, there is also a cap on the punitive damages. They establish a very high standard, but make it virtually impossible to reach that very high standard.

In the consideration of this bill by the committee, we talked about the egregious nature of sexual abuse in a medical setting, cases in which a woman is anesthetized and then abused, for instance. We thought, even if you are going to have a cap on punitive damages, those circumstances are so outrageous that we should allow an exemption—if women are able to reach the burden of proof established in the

legislation, there should be the ability to go above the cap in the McConnell amendment. This was virtually unanimously supported by the members of the committee. This is a matter of great interest to the women of this country; not just those who have been involved in cases with punitive damages, but as a message to all that this is an issue so reprehensible it is going to receive the attention of the Congress of the United States.

Now, that is out. That is out in the McConnell amendment.

We had a good deal of consideration. We had evidence not only of that kind of activity, we also had evidence where we had doctors who are practicing medicine and committing negligence when they are under drugs and also under alcohol. We wanted to have that as an exemption of punitive damages. No, that was rejected and it is rejected in the McConnell amendment.

We wanted to also lift from punitive damages those circumstances where doctors have their license suspended and still go ahead and perform operations. That was not considered during the course of the discussion and debate.

But we did accept the particular circumstances where punitive damages in malpractice, that there was going to be a recognition that in those cases that are so heinous with regard to taking advantage of women, that that was going to be addressed.

We had a second provision on the issue of damages and that was offered by our friend and colleague, the Senator from Connecticut, that was accepted. That provided that the jury would make the determination as to whether there should be the punitive damages and the judge would make the judgment to set the amount and there would be a criteria as to how that amount would be reached. That was accepted by the committee after good debate and discussion about reviewing what had happened in the States.

I was interested to hear my friend and colleague from Montana say, ''Well, Montana has just adopted a good program on the issue of malpractice.''

Well, he might as well kiss that goodbye, because we are going to preempt that under the McConnell amendment.

I am not sure that everyone understands in this body, when I listen to my colleague say we adopted a program out in Montana and it is on the books now and, thank God, we are going to have a bill that is going to reach the needs of the people of program. Well, I am telling you this program is probably going to preempt it in some form or shape and that will be true about Wyoming and Montana and other States.

But, nevertheless, we brought about some changes with the Dodd amendment on the punitive damages.

And then we had the Abraham amendment that permitted the States to opt out of any and all reforms in this bill. I would have preferred a broader form of nonpreemption language, but the committee debated the matter at length and, with great thoughtfulness, it was the will of the committee that the preemption should be addressed through the mechanism of the Abraham language. And that was after a lot of discussion and debate and a lot of give and take on it. But, effectively, that consideration and those hours of discussion and debate are by the board, and that is gone.

Now 2 days have passed since the markup of the committee. No report has been filed explaining what is either in this bill or reported out of our committee's bill. At least you should have a report of what came out of the committee and then you could explain how that is different in the McConnell amendment. But we have not even waited for that report.

And the text of the bill itself, as amended in the committee, is not even publicly available in typeset for the members of the committee; not even available. And so we are acting on the basis of the explanation of the comments of the Senator from Kentucky and others about the legislation itself.

And now the Senator from Kentucky offers the amendment that basically ignores the work of the committee. That is his right. But it should give some Members pause. Either the committee process is to be respected as a way to improve or refine the legislation or it is a joke. The language of the McConnell amendment has been rejected, much of it, by the Labor and Human Resources Committee. We considered it and decided it should be reported without taking into consideration the Dodd and the Abraham amendment.

So I hope the Members will recognize the circumvention of the committees process. He has the right to do so. But it does disregard the orderly and important consideration of complex and far-reaching legislation.

But it is interesting, Mr. President, that during the course of the consideration of the amendment in the committee, the whole question about how we should deal with the professional liability premiums for obstetricians and gynecologists was considered by the committee as well. That is in the Thomas amendment.

And I refer now to an article by the American Medical News that is right on point of the Thomas amendment.

I ask unanimous consent that the text of the article be printed in the RECORD.

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

[From American Medical News, Feb. 22, 1993]

QUALITY ASSURANCE PRENATAL SYSTEMS REDUCE RISK FOR OBS

(By Greg Borzo)

Professional liability premiums for some obstetrician-gynecologists have fallen dramatically in recent years because of greater physician participation in risk management, quality assurance and documentation of care.

Patient flow charts, checklists, practice guidelines and comprehensive office-wide management systems have played a big part in the drop, even though many physicians regard such tools as cookbook medicine.

''Because obstetrics is a high-risk area, we and other insurance companies have concentrated our efforts on it,'' said Julie Pofahl, director of risk management, Physicians Insurance Co. of Wisconsin (PIC–W), ''Physicians are improving the quality of care and their record-keeping in a variety of ways, and as a result, we have seen lower frequency and severity of claims.''

Their work is paying off. Over the last four years, premiums charged by physician-owned insurance companies have fallen more for obstetrician-gynecologists than for any other specialists, according to the Medical Liability Monitor, an independent newsletter. In 1992, half the companies did not change their premiums, while 35% reduced them an average of 8.3%. In 1989, ob-gyns insured by commercial and physician-owned companies saw rates cut an average of 14.5%; in 1990, 16.3%, and 1991, 10.9%.

One risk management and quality assurance plan, Prenatal Care, appears to be so successful in reducing obstetrics claims that at least three insurance companies are providing it free to any physician they insure, even though it costs more than $500 per system and about $5.40 per patient for materials. Two of them, Colorado Physicians Insurance Co. (COPIC) and Physicians Insurance Co. of Ohio (PICO), also offer a 15% premium rebate to physicians using the system.

Prenatal Care, a comprehensive, integrated system marketed by Advanced Medical Systems in Tulsa, Okla., includes a detailed patient questionnaire and a flow sheet to monitor a pregnancy and remind physicians to perform critical tests. It also includes physician and staff training materials and extensive patient educational handouts.

A 50-form introductory unit costs $395, an instructional videotape $95 and quarterly updates run $99 a year.

COPIC began promoting the system about six years ago, and it appears to have contributed significantly to falling liability rates for obstetricians in Colorado. Statewide, premiums fell from $61,000 five years ago to $33,000 for OBs and remained stable for family physicians who deliver babies.

Only one claim has been filed against Colorado physicians who used the system during the past six years, when it was used for more than 70,000 pregnancies and births, according to Arnold Greensher, MD, a co-developer of the system. Nationwide, two claims have been filed in 150,000 cases since the system was developed 14 years ago.

''The system helps organize patient care and makes sure that nothing gets overlooked or forgotten,'' said George Thomasson, MD, a family physician and COPIC's vice president of risk management. ''This is especially important with the growth of managed care, which leads to fragment the delivery of care.''

SLOW ACCEPTANCE OUTSIDE COLORADO

Nationwide, more than 1,500 physicians use the system in 44 states, and more than 55,000 forms were shipped in 1992, Dr. Greensher said. Physician-owned insurance companies in at least eight states are testing, promoting or giving away the system.

Louisiana Medical Mutual Insurance Co. (LAMMICO), for example, began providing the system to some of its physicians three months ago and plans to make the system available to as many physicians as possible.

But the system isn't in widespread use outside Colorado.

Even though PICO provides the system free and offers its doctors a 15% rebate for using it, only one-third of its OBs and family physicians that deliver babies use it. PICO has been promoting the system for two years.

''Physicians have been reluctant to try this because of two things: inertia and the fact that many hospitals mandate the use of certain forms of flowcharts that preclude the use of something else,'' said Mark Hannon, vice president of the doctor-owned firm.

PIC-W also provides Prenatal Care to physicians. After 1½ years, it has given away materials to about 250 physicians. ''Some obstetricians say that some of the forms are redundant and the manual is too basic to be very useful,'' Pofahl said. ''The system could be more appropriate for family practitioners than for obstetricians.''

CROWDED FIELD

Users and promoters of the system speculate that it has not caught on more quickly because of cost and competition. For years, a host of prenatal care forms and computerized systems have been available.

Chief among them is the Antepartum Record, a five-page form introduced in 1989 by the American College of Obstetricians and Gynecologists. More than 600,000 forms were sold in 1992, one version for about 20 cases per form, the other for a dollar.

''A lot of obstetricians already use the ACOG form and have developed other forms and office procedures based on it,'' Pofahl said. ''Many say they like Prenatal Care's system better but that they don't want to switch because they are just getting adjusted to ACOG or other forms.''

Others complain about the cost of switching and the inconvenience of using two systems during the interim.

While proponents claim Prenatal Care is so comprehensive that it's in a class of its own, physicians, tend to lump all systems and forms together.

''Our is the only true system,'' Dr. Greensher said, ''The other products are just forms.''

Steven Komadina, MD, agrees. Last year, he switched from ACOG's form to Prenatal Care's system, which he describes as nearly foolproof and far more comprehensive. He especially likes the patient education component, which helps the patient realize that she is responsible for her health.

The Albuquerque obstetrician has less use for the manual, but says it's helpful for nurse practitioners, physician's assistants and family physicians.

''It's helping to relieve a crisis in rural Torrance County, about 100 miles away, by giving family physicians there the competence and confidence to provide prenatal care,'' Dr. Komadina said. ''Over half the 250 women delivering there receive no prenatal care.''

Risk-management directors, however, wonder whether the system is used by physicians who need it most. LAMMICO told several ''problem'' physicians last year that it would not insure them unless they used Prenatal Care.

''Doctors who have tried the system up until now are probably the ones with a high awareness of the issues surrounding risk management,'' Gunter said. ''We want to see the impact on those with high claims frequencies.''

Mr. KENNEDY. I will read a portion of it at this time.

Professional liability premiums for some obstetrician-gynecologists have fallen dramatically in recent years because of greater physician participation in risk management, quality assurance and documentation of care . . .

''Because obstetrics is a high-risk area, we and other insurance companies have concentrated our efforts on it,'' said Julie Pofahl, director of risk management, Physicians Insurance Co. of Wisconsin. ''Physicians are improving the quality of care and their record-keeping in a variety of ways, and as a result, we have seen lower frequency in severity of claims.''

Their work is paying off. Over the last four years, premiums charged by physician-owned insurance companies have fallen more for obstetrician-gynecologists than for any other specialists, according to the Medical Liability Monitor, an independent newsletter. In 1992, half the companies did not change their premiums, while 35 percent reduced them an average of 8.3 percent. In 1989, ob/gyns insured by commercial and physician-owned companies also saw rates cut an average of 14.5 percent; in 1990, 16.3 percent; and 1991, 10.9 percent.

One risk management and quality assurance plan, Prenatal Care, appears to be so successful in reducing obstetrics claims that at least three insurance companies are providing it free to any physician they insure, even though it costs more than $500 per system and about $5.40 per patient for materials.

Then it continues.

Only one claim has been filed against Colorado physicians who used the system during the past 6 years, when it was used for more than 70,000 pregnancies and births.

One claim, one claim, in 70,000. And we have an amendment to try and escape from any kind of important liability of malpractice claim in ''70,000 pregnancies and births, according to Arnold Greensher, MD, a codeveloper of the system. Nationwide, two claims have been filed in 150,000 cases since the system was developed 14 years ago.''

In Colorado, the quality assurance system is credited for falling professional liability rates. Premiums fell from $61,000 five years ago to $33,000 for obstetricians.

This makes the case with regards to obstetricians. And they are identified as being the number one specialty in need. And here we have in the American Medical News that spells this out.

Now the fact of the matter is obstetrics and gynecology had significant problems 10 years ago, in 1985, according to the annual liability claims for 100 physicians by the Specialty and Census Division. They were clearly the No. 1 in 1985, virtually double from anyone else.

But since that time, they have had the greatest reduction, some 22.7 percent, from all the other specialities.

And that just makes the point that we made earlier and that is that the greatest problem that we are facing in terms of malpractice today is what is happening to the patients that are being left out in the cold and left behind.

You know, before we begin to shed a great deal of tears for the insurance companies and for other medical professionals, it is important to recognize that you, the taxpayer, are picking up about $60 billion a year in unpaid health bills as a result of malpractice. Someone has to pay. Many of these individuals are without any kind of health insurance or they lose their health insurance. Who do you think pays? It ends up being a burden on the system.

And what we are being asked to do is further immunize the insurance industry that has experienced substantial profits from doing what they were charged to do, and that is to provide insurance in these areas.

And second, and importantly, the McConnell amendment fails to take the kind of thoughtful steps that have been supported by Senator JEFFORDS, Senator DEWINE, and others to take steps to prevent malpractice. We ought to be debating this afternoon what steps are being taken to prevent malpractice in the first place, to keep people healthy.

I know my friend and colleague, Senator WELLSTONE, will be offering an amendment on that particular issue. We made some progress on it in the consideration of the bill before the committee, but not in this bill, not in the McConnell bill. That has all been left out.

Why are we not trying to prevent malpractice before it takes place? Why are we not trying to find out through the data bank who the bad apples are?

The data that is collected and sent to the National Practitioner Data Bank is information about malpractice cases and disciplinary actions taken against doctors. That information is made available to hospitals and to HMO's and to professional associations but is not made available to the general public. Why are we not making it available to the general public? Do you know the answer we heard in our committee? We cannot do that in the committee because the data bank is not insured enough.

I showed in the course of our considerations a book that was 5 inches tall that is published by Public Citizen, ''10,000 Questionable Doctors.'' This book documents State by State information that is available to the public, about the number of licenses revoked, surrendered, or suspended; fines against doctors; criminal convictions; sexual abuse or sexual misconduct with a patient; substandard care; misprescribing or overprescribing drugs; drug or alcohol use; and other offenses.

This is a matter of public record. It is collected in this document by Public Citizen and made available so people can find out about it. We want to make sure that it is done in a comprehensive way, updating information through the data bank. The consumers can find it if they can find this book. If they know the book exists and they know how to find it, they can look up various doctors.

Why do we make it so difficult? Why, if we are trying to prevent malpractice, are we not giving information to the public? What are they scared of? What are the doctors scared about? What are they frightened of? We know. They just do not want to have that information available, which is understandable for

their profession, but do not say to us that a prime need for us on the floor of the U.S. Senate in a health care debate is to deny the American consumer the kind of information that is available already and should be made more accessible.

The data bank ought to be strengthened. We had CBO studies and GAO studies about how its information can be strengthened. And it should be. That is something that we tried to do under the leadership of Senator JEFFORDS in our committee, which was included in the bill, though not as strongly as I would like to see.

So there are some matters that I think are of importance that were considered in some very important debates and discussions in the committee; they are the kind of matters that ought to have been included or addressed in the McConnell bill.

Mr. President, I want to take a few moments of the Senate's time just to review where we are on the issue of the insurance industry, and I refer to the National Insurance Consumer Organization report, which is a March 1993 report, because we now evidently are prepared to say that Montana does not know best how to treat these problems, or Wyoming does not know best how to deal with this; we need to have these Federal standards on the issue involving a doctor and his patient.

I, quite frankly, think this is dramatically different from even the underlying bill, the tort liability bill, where you are talking about various products that go into a State. We are talking, in this circumstance, about the very sensitive personal relationship between a doctor and a patient. There are not many other relationships which are more important and more personal.

We hear so much, we know what we really need locally. But, oh, no, the McConnell amendment is virtually going out to preempt State activities. So we have to know we have a declining need or declining burden on the profession, as we mentioned the OB/GYN, what the recent statistics show.

Consider the number of gynecologists that are graduating from our fine medical schools. That number is not diminishing. The Department of Health and Human Services finds the relationship between needs and supplies in six specialities are far from having a shortage. There is actually an oversupply of obstetricians and gynecologists.

I am glad to work with our colleagues about how we find out how to deal with underserved areas, but this is not the answer. You have the underserved areas. You have to deal with the burden a young person has when they graduate from college or from medical school, what their financial burden is, because they cannot make the sufficient resources, if they are going to go into a rural and underserved area, as they do in an urban area or in some of these specialities. You have to understand that they do not get the kind of support they would get if they would practice their medicine in one of the fine medical institutions. They are denied that.

Third, they fall further behind their classmates in terms of upgrading their skills. That is troublesome.

Fourth, in too many areas that are underserved, they do not have as good an opportunity for education for the children of these young people that want to go to school, and the parents, as dedicated as they are, do not want to disadvantage their children.

There are a whole series of reasons. But to tie in the fact that we have underserved areas in this country and that the principal reason is because of the insurance to the OB/GYN just does not hold.

Mr. President, I want to just again refer to the studies that were done by the various State organizations, insurance associations and their review of what is happening on medical malpractice insurance in their particular States. One of the States that they have reviewed is a State that has a number of the features that have been included in the McConnell amendment, and this is what they point out.

In 1991—and I will include the appropriate parts of this study in the RECORD for reference for Members over the weekend —in 1991, insurers writing medical malpractice insurance in the United States earned a return of $1.419 billion or 15.9 percent of net worth. This is the profit after dividends to doctors and hospitals of 4.2 percent, over $200 million. Investment income amounts to almost 50 percent of premium, due to lost reserve. Economists testified in insurance rate matters that returns of 13 to 16 percent on net worth are appropriate for this line of insurance. Here it is for this line of insurance, 13 to 16 percent guaranteed. I think most Americans would want to have that kind of investment if they could be assured of that kind of profit.

According to studies undertaken by the California Department of Insurance, properly capitalized insurers should hold only about a dollar of net worth for every dollar of premium for this line of insurance. This is medical malpractice. Had insurers not retained so much previous profit, America's medical malpractice insurance return on net worth would have been 29.2 percent. Mr. President, 29.2 percent—a remarkable high return—which is almost double the profit required to reward the risk of underwriting medical malpractice. And in the six States that undertook tort reform, studied by the GAO office, profits in 1991 averaged 122 percent above the national average, implying possible insurer profiteering in these States.

(Mr. SANTORUM assumed the chair.)

Mr. KENNEDY. It is those provisions which are basically and fundamentally included in the McConnell amendment, at a time when you have 100,000 Americans that are dying, you have no pressure in terms of the increased premium costs, a decline in judgments and in the number of cases that are brought. And in the six States which have effectively brought about these kinds of no joint and several—the collateral charges, the limits on the fees for doctors and all the rest, they are having 122 percent above the national average. Here we are debating a health matter before the U.S. Senate, with all of the health issues that are affecting working families in this country, for all those parents that are going to go home tonight and wonder whether they are going to still have jobs because of downsizing or cutbacks in defense, or because of all the challenges in our economy, wondering whether they are going to have it; or whether those families know whether they are going to get it tomorrow, or the 800,000 new children are not covered on the basis of last year alone.

Here we are taking action that is going to provide that kind of a guarantee to the insurance industry. I thought we were here to represent the working families, working men and women, the children, the older people. We hear the reports that are coming out of our Budget Committee about further cutbacks in Medicare for elderly people. That is an enormously important problem. I think we ought to have some adjustments if it is part of an overall and comprehensive reform. But here in the first order of business in the Senate we are looking out after these insurance companies. This has to be a matter that must be of concern to all Americans.

I will include the segments of the most recent report which came out in the last 2 days, Mr. President. I will mention just one interesting observation about the most recent reports. Insurance companies have now reduced malpractice liability premiums commensurate with a drop in malpractice claims payments in recent years in California and the Nation. Insurance companies have reaped excessive profits—in 1993, paid out 38 cents of every premium dollar.

Well, Mr. President, that is what we are addressing here. We will hear a great deal about, well, can we not do something about the person that is the victim of malpractice? Yes, we can and we should. That is why out of our Human Resources Committee last year we came out urging the States to have alternative dispute resolutions, and to build on the existing programs adopted in the States that go for early resolutions, to experiment with practice guidelines and enterprise liability, even no-fault liability programs, all of those matters to try and look out after the consumer. All of that has passed and gone out. All of that experimentation is out. All of the efforts to try and prevent malpractice, all of those are out. All we are dealing with is bottom-line issues. What is going to happen on the bottom line for those medical insurance companies? That is the issue. Let us not fool ourselves about it.

A recent article that gives a characterization of malpractice coverage in a stable condition says this—and this is Business Insurance, March 28, 1994, 2 months ago:

Insurers view medical malpractice, hospital professional liability, and related coverage as profitable lines these days, Broker says. In fact, some insurers are looking to increase malpractice accounts in an attempt to offset the meager earnings in the commercial market.

There is more capacity and there are more players than 3 years ago. More market and capacity than there were 3 years ago. It seems like every month a new insurer wants to underwrite medical liability and coverage for health care organizations.

Is this what we are hearing from our colleagues that are crying crocodile tears about all of our specialties that cannot do it and are not able to serve our poor, underserved people in this country? That is hogwash. See what the insurance industry says, not what some of us who have serious concerns about this whole kind of approach say. Look at what Business Insurance says about it. It seems like every month a new insurer wants to underwrite medical liability coverage for health care organizations. As long as companies are making profits that exceed the average property casualty profit line, they will want to underwrite this coverage.

In other words, boys and girls, you want to get on the gravy train, get on the malpractice gravy train, as it is today. We are going to even make it better for you with the McConnell amendment.

Mr. President, we must have other measures which are of greater urgency and importance for us to be addressing than that particular measure.

It seems to me that at the appropriate time—and I see others that want to address the Senate—I will offer the amendment which I offered in the committee, which basically was the substitute amendment which was accepted unanimously last year in the Human Resources Committee by all Republicans and Democrats.

Let me tell you what it is about. It is a reasonable question to say, all right, we know what you are against. We have problems. What are you for?

Let me briefly summarize what this amendment would do.

The amendment that I will offer at an appropriate point is identical in content to the malpractice reform subtitle of the health care reform, favorably reported by the Labor Committee. It seems to me that this is the appropriate vehicle to report to the full Senate because it was the product of carefully measured bipartisan deliberation. In that regard, it stands in sharp contrast to what the measure is that is before the Senate this evening.

Many of the current members of the Labor Committee will remember that we spent the better portion of 2 days thoroughly discussing and improving the malpractice title of the health care bill. For example, there was considerable debate about the preemption issue. We resolved that by accepting a Coats amendment striking preemption language that had been in the original mark.

It was a debate in a series of amendments regarding attorneys' fees and the result was a deliberative process. We limited those fees from the percentage that originally appeared in the Clinton bill. We sharpened the State demonstration programs authorized in the bill, adding a proposal by Republicans to explore no-fault liability programs. That said, if you have injury, you are able to collect right away; you do not have to prove negligence, and you can be reimbursed right away. It will not be as much as if you had gone through a court procedure, but you will get resources quickly in response to medical injury. A few States are doing that. We are encouraging that as a way to assist fellow citizens and to see whether it works. Eventually, we reached a bipartisan consensus on sensible medical malpractice reform provisions.

There are some who wish to go further in the area of damage caps, which my impression of the language in that subtitle, was broadly acceptable to every member of the committee.

The reforms the Labor Committee approved last year included mandatory alternative dispute resolutions; a limitation on attorney's contingency fees, collateral source reduction, periodic payments of awards, a State option to require certificates of merit before filing actions, and State demonstration projects to determine alternative approaches to malpractice.

These are meaningful, major kinds of reforms to the system that we had, and not only with regard to the malpractice. We had important and significant reforms in the areas of preventive health care, which I will not get into at this time.

These are the provisions we all agreed upon. They are sane, rational reforms which we crafted ourselves over lengthy bipartisan deliberation.

Although I would greatly prefer to see them included in a far more reaching health reform bill that would guarantee health security, they remain acceptable to me as an alternative to the measure which we are considering on the floor of the Senate. They will improve the malpractice system without unduly limiting the right of consumers to compensation for injuries sustained as a result of negligent medical care.

I submit that it is preferable to adopt these carefully consider reforms, rather than rushing to approve a bill that we have not sufficient time to address.

Now, Mr. President, it seems to me that that is a responsible, thoughtful product of give and take by Members, that come here with a wide variety of different thinking on the issue of malpractice reform.

We saw considerable debate that took place for a day and a half in our committee. We were able to make some adjustments. Still, it was not reported out in a bipartisan way. Nonetheless, we made some progress. That has effectively been discarded.

At an appropriate time I will offer that amendment perhaps as a second-degree amendment to the McConnell amendment. An additional amendment, Mr. President, that I intend to offer, would make clear that the reforms in this bill do not preempt State law.

I see the Senator from West Virginia. I have about 10 more minutes. If the Senator had a statement or intervention to make, I would be glad to yield, but otherwise if it is agreeable, it would be about 10 more minutes.

The preemption amendment would make clear that the reforms in the bill do not preempt State law, but apply in situations where there is no relevant State law. But where a State legislature has enacted a reform or affirmatively chosen not to enact to reform, the State's choice would prevail.

We hear much from the new majority in Congress about the States rights and the decentralization of power. We see proposals to turn over the administration of Federal entitlement programs to the States in the form of block grants, and we are told that there is much wisdom in State governments which are closer to the people than the Federal Government. However, in this bill, the opposite philosophy prevails.

Suddenly States cannot be trusted. States cannot even be allowed to write the laws to govern consideration of tort cases that have been their responsibility for over 200 years, about 100 years, recognized in court opinion.

Apparently in this area, Congress has all of the answers. It is especially strange that this bill preempts State laws very selectively. Only laws that benefit consumers are preempted, while those that benefit doctors and insurance companies are allowed to stand. Preemption of State tort laws is generally disfavored, but this result-oriented brand of preemption is especially unfair. One sided preemption. One sided.

We can make the case on the issues of tort that States should be able to make their own judgments. That is certainly the conclusion that we reached last year. However, in this particular program they say, all right, the States can make it as long as they are making what is favorable to the industry and not the consumer. That is the bottom line.

It is one-way preemption against the consumer, against those working families, against those children, against those parents, in favor of those insurance companies that are making the record profits.

There is a product liability bill on the floor, and I have serious concerns about many aspects, but at least there

is a plausible basis for Congress to create Federal standards to govern the liabilities of manufacturers who sell products in a nationwide market.

Undoubtedly, interstate commerce is at stake in the context of product liability, but the medical malpractice is typically a legal dispute between an individual, between his and her doctor, within the boundaries of a single State. Interstate commerce is hardly at the heart of the transaction, so there is no justification for imposition of Federal standards.

When we considered malpractice in last year's health bill, Members of both sides of the aisle were anxious to protect the reforms that their legislatures had enacted. Everyone recognized the need to proceed slowly for overturning 200 years of law in 50 States, and by unanimous vote we deleted that language that would have preempted inconsistent State lawsuits.

The amendment basically carries forward that valuable lesson from last year's debate that States that the basic principle, that this bill does not preempt State law. If a State has taken no action in a particular area, this Federal law will apply; but if a State has found a better way to address a problem in light of conditions in that State, we should not substitute a Federal solution in a field that States have occupied for 200 years of American history.

So there would be a preemption amendment. I would hope that this would be successful. There are other approaches that have been mentioned, by Senator ABRAHAM and others, who have addressed that.

Finally, I would just say that many were absolutely amazed at the inclusion of a loser-pays concept, included in the legislation which was included in the bill that was before our committee. I understand it has been changed. I think, wisely so.

We could be in the extraordinary case where an individual was able to win their case in the courts, and because they had not accepted a previous kind of offer, effectively would have been required to pay the attorney's fees for the other side, even though they got a finding that there had been negligence and they had been endured medical malpractice.

Now, the loser-pays system has been a part of English law. There is an excellent article from the bar association, recently pointed out, and as the Economist magazine, one of the distinguished magazine commentaries both on American and English public affairs has pointed out, they are moving in the direction of the United States for well-documented reasons. And that is because the unfairness and injustice that that creates.

We had a proposal before to move in their direction. It was not enough to have the punitive damage caps or the repeals of joint and several, which have been out there for many years which had loser pay. We had one-way preemption and we have no access to the data bank.

That was the major flaw—the cap on punitive damages, no matter how egregious the circumstance was going to be, in spite of the high standard that would have to be reached in order to be able to claim punitive damages, the repeal of joint and several so that even in a circumstance we could see the tragic circumstances where that individual in Florida that lost one leg, he was also a diabetic, so he was disabled. Hence, he did not have the loss of much wages and economic damages. Since he is getting disability, the disability was paying in, that would be an offset to what the insurance would have to pay if there was negligence in that particular case. That is absolutely crazy. That is absolutely crazy.

Those are the kinds of circumstances. When we have joint and several, and we eliminate those, and we eliminate the payment, the legitimate payment, to those individuals that ought to be decided on the basis of the jury, someone pays—and it is the American taxpayers—$60 billion. That is who ends up paying, if the insurer that is supposed to provide that kind of coverage, and is obligated to do so, if they are in the insurance business, does not do so.

We also know the dangers of adding onto that the collateral provisions, which in many instances diminishes in a dramatic way the payments to individuals who otherwise would be entitled to payments in a court of law. That has been a factor.

Then one of the most extraordinary matters we were facing in our bill is, even if you got the punitive damages, if you were able to get some punitive damages, part of those punitive damages were going to go to fund some quality control measures. That made absolutely no sense at all.

So I hope we will have a chance. We are glad to work with the leadership to try to get an orderly way of addressing some of these issues. It is not our intention—at least not my intention—to delay Senate action. But I do think we just had the measure that came up this afternoon when many of us were over on the Judiciary Committee. My colleague, Senator SIMON, and other members of our committee were at the Judiciary hearing on terrorism; and we had the mark-up on the Judiciary Committee earlier today on regulatory reform, which a number of us are involved in. We want to meet our responsibilities. But on important measures like this, the Senate is entitled to at least give some consideration to matters which are going to have an enormous impact on fairness and on justice and on the quality of health care for the American people.

One of the aspects of health challenges that we are faced with—we have the issue of access and the availability of health care. We have the costs of health care, the fact that it continues to rise. From $1 trillion, it will double by the year 2002 to $2 trillion. We have to do something about getting a handle on those health care costs. We have to do something in terms of making it available, particularly to the children. Of the 40 million people who have no health care coverage, about 15 million children in our country have no health care coverage. We have to do something about those. But we have to do something about quality as well, and this is something that deals with quality and it is a step backwards, not a step forward. And it should not be accepted.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, what is interesting about all of this is that the business at hand is something called the Product Liability Fairness Act. I want to be very frank about my disposition towards the amendment which is at this moment before us.

This is not a unique situation in the Senate. Senators have the right to come forward and offer amendments to legislation that are outside the scope of the legislation before the Senate. We have seen that done ever since I came to the Senate, from both sides of the aisle. And sure enough, Senators from Kentucky and Connecticut and Wyoming are using their rights to ask the Senate to decide whether to attach a series of provisions dealing with malpractice to a bill dealing solely and only with product liability.

An entire day disappears. Whether there is passage or not, it will not be a part of the final version of this legislation. It will get vetoed, it will get taken out one way or other. It is an exercise of folly, which is sad. And I will express my views.

I am deeply committed, as committed as anybody in this body, to health care reform. And I see malpractice reform as an integral part of the solution to the crisis that faces the self-esteem and the condition of our physicians, our hospitals, and the American people, and I think of those in my own State of West Virginia in particular.

Mr. President, I have watched the Senate come very close to the point where we might enact a product liability bill during the past 6 years. We actually got 60 votes several years ago; 60 was written down on the table here in front of us. The majority leader at that time, under the rules, stopped the vote and we spent the next 45 minutes while he found two Senators who had voted yes to change their votes to no. So we lost.

Now that we have 20-minute votes, that is much harder to do. I am very happy for that. But we have come very close. And I take product liability reform extremely seriously. I think it is something that needs to happen both for consumers and for businesses in this country. I think it is important for America. I think it is important for the American people. I take product liability seriously and anything which comes in the way of product liability,

and a chance—and perhaps the last chance that we ever have—to assemble a coalition that is willing to go for this. Now we have other amendments.

You have to understand, as I am sure the President does, that people better start making a decision around here. Do you want to have the fun of making wonderful speeches and putting on what I think is very good legislation, amendments in terms of malpractice reform? Or do you want to have product liability? You are probably not going to have both.

Today has been interesting. I did not schedule a lot because I thought we were going to be dealing with product liability, and all of a sudden we are dealing with something called malpractice reform that has to do with health care.

Now the Senator from Massachusetts is talking about a whole series of amendments, so I assume this will go on for a long time. There are some people in this body who have not yet quite decided whether this bill, called product liability reform, is in fact good public policy. That may be more on this Senator's side than the side of the Presiding Officer. But there are some people who have not quite decided whether this bill should be used to enact good public policy on product liability.

Or are we just making points about other things that we are interested in? Which I might be interested in. But at some point people have to make a choice. Are we going to do product liability or are we going to do a whole series of things which then end up negating the chance to get product liability?

I have been working on product liability for 9 years; some have for 13. I made a variety of tabling motions yesterday to express very clearly my view about that. In fact, there was one that was a Heflin-Rockefeller amendment, which does not comport with the natural tendencies that surround product liability. I am trying to make the point that I want this to be a pure product liability bill.

The Senator from the State of Washington, Senator GORTON—extraordinarily skillful, extraordinarily insightful, extraordinarily disciplined—believes, as I do, that if we are going to get 60 votes to stop the filibuster that will surely be there and will come at some point, it is going to be very close. And he agrees that we should focus, as I agree we should focus, on product liability.

It is a very complicated subject. It is a very complicated subject to explain, particularly when explained by a nonlawyer such as myself, much less a skilled lawyer such as my colleague from the State of Washington.

The majority leader can schedule a separate time, its own special time to take up malpractice reform such as the malpractice reform legislation that, in this case, was adopted just on Tuesday by the Senate Labor Committee. But in good conscience I, as manager on the Democratic side of the aisle, cannot take the risk when the chances are good of enacting product liability reform, making reforms to a broken, dysfunctional product liability system—that these will all be torn asunder, weakened, scattered about by a series of other amendments, in this case dealing with a very, very important subject called malpractice reform. I do not have any choice but as to my conclusion, and at the appropriate time I will move to table this amendment and the underlying amendment, and other amendments associated with it. I have no choice.

With cosponsors from both sides of the aisle, with a long history of strong support in this body, Senator GORTON and I have been on this floor all week talking about our rather grave concern about the problems in the current patchwork of unpredictable, unfair matters associated with product liability. This Senate has before it a very carefully constructed bill to improve the system to make it less costly, to make it more predictable, to make it more fair for everyone. And enacting product liability reform is what I believe the goal should be for the Senate at this moment, as of all of this day, as of all of the moments that remain.

Yesterday, as I indicated, we moved to table a number of amendments which were related to a legal system and lawyers, but were beyond the scope of product liability legislation. So I moved to table them. The malpractice reform amendments offered today are analogous to previous broadening amendments which were offered and then tabled.

I hope that we can reach an agreement on a course of action that provides for a meaningful debate on the pros and cons of malpractice reform, and in the near future. As I have indicated, I think if we could do this before July 4, it would be very, very good. That might be an option which would address any concern that there will not be another timely opportunity to deal with malpractice reform.

The medical community in my State wants malpractice reform more than anything else that exists. They want it desperately. I also do. Given another moment on another day, a bill in the range of what has been presented this day would have my vote; that is, the kind of amendment on malpractice which has been presented by Senator MCCONNELL would have my vote. I would argue for it vociferously. I might disagree with some of the points that have been made about it, but not the majority of its provisions. I hear from doctors all the time, I hear from hospitals all the time about the importance of malpractice reform to them as essential health care professionals in my State. We have had ongoing dialog on this issue, and I know I can say that I understand what they want. I understand the problems of health care.

I have done a lot of work on health care over the last 8 years or so. I very much want to be able to improve the climate for practicing medicine in West Virginia for all providers. I want to do all I can to make sure that we have an adequate supply of all needed health care professionals in my State, particularly OB–GYN's and health care providers which are in short supply in almost every county—in some counties in the State of the Presiding Officer; in most counties in my State.

I also believe good malpractice reform will help improve the quality of health care services in my State, malpractice reform can be in the best interests of patients and their health care professionals alike.

What is interesting is that malpractice is also a state of mind preventing a lot of people from going into medicine. There are a lot of doctors now who have told me they do not want their sons or daughters to go into medicine. It is not worth it, they say. Every patient they face is a potential litigant. We are a litigious society, sadly and shockingly so.

Yesterday, I had a long visit with Dr. Jim Todd, executive director of the American Medical Association; Dick Davidson, of the American Hospital Association; and Tom Skully, of the Federation of American Health Systems, another group representing a large number of hospitals in this country. They said nationwide the doctors and hospitals whom they represent, and that is a very large collective membership, want strong malpractice reform enacted as soon as possible. I shared with them my strong desire to help toward passage of that end. But let me say that we cannot do both things at the same time.

If we pass medical malpractice and it is incorporated into the product liability bill, some votes from this side will fall off and the entire tree will collapse. You put too many decorations on a Christmas tree, and at some point the bow simply falls and everything drops off.

I do not think it is very complicated. I think this really is a test of who wants product liability reform and who does not. I can understand the opponents of product liability reform adding on all kinds of amendments. I can understand that to deter, to generally scatter attention, and to dilute. But I cannot understand those who favor product liability doing that.

This is not just a question of the House agenda, the Contract With America. There is a lot of concern on my side, Mr. President, about this bill—it is very real on my side—that it is going to be loaded up with what came over from the House. I think one of the things that the other side is learning now is that, if they were to put forward a series of amendments, they will not get as many votes as they thought they would, and the votes really will not be there to do the job. It will not be there on our side, almost

for certain, and they will not be there on the other side.

So here we are. I may not agree with every provision of malpractice reform advanced by some. But I want to see it done. I want that clear. This is, in a sense, my issue as much as any issue in this body. I have physicians, hospitals, and others—and patients in West Virginia—who need to have this happen. I just want to be certain that no one misunderstands my position. Despite the concern that other Members have expressed about attaching malpractice reform onto product liability, I have no intention of ducking the issue of the need to deal with malpractice reform. I understand what is going on.

I am interested in why the Senator from Kentucky chose to offer his original malpractice bill as an amendment as opposed to what was marked up in the Labor Committee. The majority of the provisions of Senator MCCONNELL's bills are ones which most of us supported in the past on one piece of legislation or another. I am also interested in hearing the rationale for Senator THOMAS' second-degree amendment regarding rural care.

But, in the end, I just return to Senator MCCONNELL's underlying malpractice reform amendment and I say, do we not have to choose? I feel we do. We cannot have it both ways. I fear that, if this amendment, as much as I might be interested in it, were to prevail, it would peel off votes from my side of the aisle, and product liability would lose. I do not want that to happen. The Senator from Washington does not want that to happen. It has been our pledge from the beginning that we are going to try to keep this bill as clean as possible; clean—only product liability. Anything outside, we work against.

So I hope my views on this are understood. I repeat that at the appropriate time, I will move to table the various amendments that deal with this subject.

I thank the Presiding Officer and I yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. I wish to comment just briefly on the comments of the minority manager of the bill. I wish to assure him that coming from a State that suffered as much from the problems of product liability reform, having lost much of our machine tool industry and a big cause of that being the big differences between the liability of our own businesses in this country and those of our foreign competitors, I will not do anything in any way to destroy the opportunity to have product liability pass, and I think I speak for the Members on my side of the aisle.

However, I feel I must bring to his attention and the attention of my colleagues that there is a very noncontroversial aspect of the MCCONNELL amendment which, if passed, would move us a long way towards two very important matters in the health care area. First of all, it would assist in preventing medical malpractice, which is probably the most important thing we can do. What we want to do is to provide the opportunity to gather the information which would be necessary to be able to prevent the occurrence of malpractice by having sufficient guidelines and information available to doctors so that the number of incidents of malpractice will be decreased.

And second is to protect consumers. We are moving into an area right now where we have managed care throughout this country. Health care reform is going on. Notwithstanding the fact that we failed to pass anything of any substance last year, health care reform is going on. But the managed care concept raises real serious problems for consumers as to how they can be protected when they get into situations where choice of the doctor may not be what they intend or even available to them. How can they get information on what is available to see if the care they are going to get or the doctor or physician they have is one that is qualified?

So I am referring to a part of the McConnell amendment that is under subtitle B that is called ''Protection of the Health and Safety of Patients,'' and most particularly section 32, which is entitled, ''Quality Assurance, Patient Safety, and Consumer Information.''

We are now in the information age, and with all of the computer internets, all the information that is able to flow back and forth, we have an opportunity to give to the health care providers the ability to know what is good care and what is not good care, to have information on outcomes to be able to determine as to what should be done and what is good care and what is not good care.

All this bill does is to provide an organized system for obtaining this information in various ways and making it available for those purposes. No one disagrees with that.

So I would hope, if nothing else, we can include these things which are totally noncontroversial to this bill if it should prove the malpractice provisions otherwise might bring the bill down. What it does is establish an advisory panel to coordinate and evaluate methods, procedures and data to enhance the quality, safety and effectiveness of health care services provided to patients. No one disagrees with that.

In order to do that, the panel that would be set up will assure that the members of the panel include representatives of the public and private sector, entities having expertise in quality assurance, risk assessment, risk management, patient safety and patient satisfaction.

What it does, it establishes these objectives, again for which there is absolutely no problem with anyone.

The survey shall include gathering data with respect to, first, performance measures of quality for health care providers and health plans; second, developments in survey methodology, sampling, and audit methods to try to determine what is going on; third, methods of medical practice and patterns and patient outcomes; and fourth, methods of disseminating information concerning successful health care quality improvement programs, risk management and patient safety programs, practice guidelines, patient satisfaction and practitioner licensing, all things we know are essential to be able to give us the kind of information we must have to protect the consumer and as well to give guidance to the medical profession to reduce the opportunity for malpractice.

In addition, ''the administrator shall * * * establish health care quality assurance, patient safety and consumer information guidelines. Such guidelines shall be modified periodically. Such guidelines shall be advisory in nature and not binding.''

So we are not doing anything that anyone can disagree with but will be so important to provide the information that is necessary, made available through internets and whatever else, to ensure that we are getting the best care possible that is available. So I do not think anyone can disagree with these provisions which the McConnell substitute attempts to accomplish.

So I would urge my colleagues, be assured that there are many good things that are noncontroversial and very important to the improvement of our health care system which are in the McConnell substitute and which are not things that should give us any concern at all.

So I hope, as we go forth here, if the minority manager of the bill is correct in that malpractice is going to be so controversial that it will not pass, that something which the sooner we get started the sooner we will be able to prevent medical malpractice and the sooner we give protection to consumers ought to go forward in some way along with this bill rather than have to wait, so that we can get to the business of providing that kind of information and that kind of assistance to both practitioners and to consumers.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, might I ask, are there other colleagues who want to speak right now? If not, I wonder if I could suggest the absence a quorum for a moment with the understanding that I would have the floor.

Mr. DOMENICI. Mr. President, I am going to speak at length, but I would like to take 2 minutes now and then I will sit down and come back later or whatever time is available. Could I do that?

Mr. WELLSTONE. Mr. President, that would be fine.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, later on I will speak to the overall issue of judicial and jury reform as it applies to civil litigation in the United States, but I thought I might just tonight express for the Senators at least what my head tells me about this system. I was looking around for some judicial stalwart who might have addressed the issue, and I found that Supreme Court Justice Lewis Powell described punitive damages as follows:

It invites punishment so arbitrary as to be virtually random.

Now, the reason I bring that up is because I believe that it is absolutely true, and so what we get in certain advertisements across the country and in statements in the Chamber, is the random damage award that was proper or somewhat proper. But we do not hear the hundreds that were randomly wrong, wherein the jury was taken advantage of by emotions and awarded huge punitive damages when they were not warranted. We also don't hear about the even bigger issue of what this does overall to our litigation system. Clearly it invites more litigation because the random winner may be a big winner.

Now, what does the random nature of the potential for a big win mean to our litigation system? Mr. President, it means cases get settled that are not worth anything. That is obvious. A company has to settle lawsuits because they cannot take the chance of the random verdict.

Now, I am very pleased that Justice Powell said it that way. I have said it is the worst way to regulate human behavior in America. If you are trying to find standards to have people hold their performance to, the worst way is to ask juries to set the standard. For nobody knows what it will mean and clearly juries have all the latitude in the world when you add punitive damages to the system. It leaves all kinds of impressions with those who are supposed to be bound in some way, by changing their conduct to a high or better standard.

Now, the Justice went on to say the following, which sort of hits my last remarks: Because juries can impose virtually limitless punitive damages, in Justice Powell's words, they act as—And I say this to my good friend from Washington, let me quote it perfectly as he said it—they act as a ''legislator and judge without the training or experience or guidance of either.''

That is a pretty good way to say it. Who told juries what the standard of conduct is or what a company ought to pay if they violate some kind of standard of the ordinary man or ordinarily prudent man? No one. So they are told that by words that lawyers express, when they are not trained in the law and they are not trained in what kind of damages we ought to extract from people who do not behave according to a norm.

So I come to the floor to laud those who are looking for reform in this system. And I specifically tonight just had a few remarks with reference to punitive damages. Clearly, there are cases where punitive damages should lie. On the other hand, there is not going to be a perfect solution to the dilemma we find ourselves in. If we conclude that since we cannot come up with a perfect system on punitive damages since there are a few cases that are entitled to extraordinary kinds of punitive damages for one reason or another, that we cannot solve that problem, we will never do anything.

We will leave in place a system that is so arbitrary as to be virtually random. We will run around this country talking about that as if it were a real, bona fide, honest-to-God system when it is nothing like that. It is so arbitrary as to be virtually random. And that is no system. That is no system of assessing damages.

Mr. President, obviously I have not been down here during the past week. Some will probably say, ''You have already said enough.'' But obviously, I will say a little more, because I have some pretty strong feelings about it.

I close with a parting shot. I wonder if our Founding Fathers and the common law of England from which we continue to say we derived all these marvelous rights, I wonder if they ever would have had in mind that we would send a malpractice case of the type we are sending the juries, or product liability of the type we are sending to the juries. I believe if you had asked the Founders, they would have said, ''Of course not. They ought to be arbitrated by people who know something about it.''

I yield the floor.

Mr. WELLSTONE. Mr. President, I had a chance to speak at some length today, so I will not respond to my colleague from New Mexico. I appreciate his remarks. I tell him as a good friend, I should have known when he said it would be 2 minutes, it would be a little more than 2 minutes. But he is eloquent and he is a very, very important voice here in the Senate.

Mr. President, I ask unanimous consent that the Thomas amendment be set aside so that I may offer an amendment.

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

Mr. WELLSTONE. I thank the Senator from Washington.

AMENDMENT NO. 605 TO AMENDMENT NO. 603

(Purpose: To modify provisions regarding reports on medical malpractice data and access to certain information)

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 605 to the McConnell amendment No. 603.

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

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

The amendment is as follows:

In section ___32(c)(1) of the amendment, strike subparagraph (B) and all that follows through the end of the section and insert the following:

(B) an estimation of the degree of consensus concerning the accuracy and content of the information available under subparagraph (A); and

(C) a summary of the best practices used in the public and private sectors for disseminating information to consumers.

(2) INTERIM REPORT.—Not later than 1 year after the date of enactment of this title, the Administrator shall prepare and submit to the Committees referred to in paragraph (1) a report, based on the results of the advisory panel survey conducted under subsection (a)(3), concerning—

(A) the consensus of indicators of patient safety and risk;

(B) an assessment of the consumer perspective on health care quality that includes an examination of—

(i) the information most often requested by consumers;

(ii) the types of technical quality information that consumers find compelling;

(iii) the amount of information that consumers consider to be sufficient and the amount of such information considered overwhelming; and

(iv) the manner in which such information should be presented;

and recommendations for increasing the awareness of consumers concerning such information;

(C) proposed methods, building on existing data gathering and dissemination systems, for ensuring that such data is available and accessible to consumers, employers, hospitals, and patients;

(D) the existence of legal, regulatory, and practical obstacles to making such data available and accessible to consumers;

(E) privacy or proprietary issues involving the dissemination of such data;

(F) an assessment of the appropriateness of collecting such data at the Federal or State level; and

(G) the reliability and validity of data collected by the State medical boards and recommendations for developing investigation protocols.

(3) ANNUAL REPORT.—Not later than 1 year after the date of the submission of the report under paragraph (2), and each year thereafter, the Administrator shall prepare and submit to the Committees referred to in paragraph (1) a report concerning the progress of the advisory panel in the development of a consensus with respect to the findings of the panel and in the development and modification of the guidelines required under subsection (b).

(4) TERMINATION.—The advisory panel shall terminate on the date that is 3 years after the date of enactment of this title.

SEC. ___33. REQUIRING REPORTS ON MEDICAL MALPRACTICE DATA.

(a) IN GENERAL.—Section 421 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131) is amended—

(1) by striking subsections (a) and (b);

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(3) by inserting before subsection (d) (as redesignated by paragraph (2)) the following subsections:

''(a) IN GENERAL.—

''(1) REQUIREMENT OF REPORTING.—Subject to paragraphs (2) and (3), each person or entity which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 424, information respecting the payment and circumstances of the payment.

''(2) PAYMENTS BY PRACTITIONERS.—Except as provided in paragraph (3), the persons to whom paragraph (1) applies include a physician, or other licensed health care practitioner, who makes a payment described in such paragraph and whose act or omission is the basis of the action or claim involved.

''(3) REFUND OF FEES.—With respect to a physician, or other licensed health care practitioner, whose act or omission is the basis of an action or claim described in paragraph (1), such paragraph shall not apply to a payment described in such paragraph if—

''(A) the payment is made by the physician or practitioner or entity as a refund of fees for the health services involved; and

''(B) the payment does not exceed the amount of the original charge for the health services.

''(b) INFORMATION TO BE REPORTED.—The information to be reported under subsection (a) by a person or entity regarding a payment and an action or claim includes the following:

''(1)(A)(i) The name of each physician or other licensed health care practitioner whose act or omission is the basis of the action or claim.

''(ii) To the extent authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.), the social security account number assigned to the physician or practitioner.

''(B) If the physician or practitioner may not be identified for purposes of subparagraph (A)—

''(i) a statement of such fact and an explanation of the inability to make the identification; and

''(ii) the name of the hospital or other health services organization for whose benefit the payment was made.

''(2) The amount of the payment.

''(3) The name (if known) of any hospital or other health services organization with which the physician or practitioner is affiliated or associated.

''(4)(A) A statement describing the act or omission, and injury or illness, upon which the action or claim is based.

''(B) A statement by the physician or practitioner regarding the action or claim, if the physician or practitioner elects to make such a statement.

''(C) If the payment was made without the consent of the physician or practitioner, a statement specifying such fact and the reasons underlying the decision to make the payment without such consent.

''(5) Such other information as the Secretary determines is required for appropriate interpretation of information reported under this subsection.

''(c) CERTAIN REPORTING CRITERIA; NOTICE TO PRACTITIONERS.—

''(1) REPORTING CRITERIA.—The Secretary shall establish criteria regarding statements described in subsection (b)(4). Such criteria shall include—

''(A) criteria regarding the length of each of the statements;

''(B) criteria for entities regarding the notice required by paragraph (2), including criteria regarding the date by which—

''(i) the entity is to provide the notice; and

''(ii) the physician or practitioner is to submit the statement described in subsection (b)(4)(B) to the entity; and

''(C) such other criteria as the Secretary determines appropriate.

''(2) NOTICE OF OPPORTUNITY TO MAKE A STATEMENT.—In the case of an entity that prepares a report under subsection (a)(1) regarding a payment and an action or claim, the entity shall notify any physician or practitioner identified under subsection (b)(1)(A) of the opportunity to make a statement under subsection (b)(4)(B).''; and

(3) by adding at the end the following new subsection:

''(f) DEFINITIONS OF ENTITY AND PERSON.—For purposes of this section—

''(1) the term 'entity' includes the Federal Government, any State or local government, and any insurance company or other private organization; and

''(2) the term 'person' includes a Federal officer or a Federal employee.''.

(b) DEFINITION OF HEALTH SERVICES ORGANIZATION.—Section 431 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11151) is amended—

(1) by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively; and

(2) by inserting after paragraph (4) the following paragraph:

''(5) The term 'health services organization' means an entity that, directly or through contracts or other arrangements, provides health services. Such term includes a hospital, health maintenance organization or another health plan organization, and a health care entity.''.

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.) is amended—

(A) in section 411(a)(1), in the matter preceding subparagraph (A), by striking ''431(9)'' and inserting ''431(10)'';

(B) in section 421(d) (as redesignated by subsection (a)(2)), by inserting ''person or'' before ''entity'';

(C) in section 422(a)(2)(A), by inserting before the comma at the end the following: '', and (to the extent authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.)) the social security account number assigned to the physician''; and

(D) in section 423(a)(3)(A), by inserting before the comma at the end the following: '', and (to the extent authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.)) the social security account number assigned to the physician or practitioner''.

(2) APPLICABILITY OF REQUIREMENTS TO FEDERAL ENTITIES.—

(A) APPLICABILITY TO FEDERAL FACILITIES AND PHYSICIANS.—Section 423 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11133) is amended by adding at the end the following subsection:

''(e) APPLICABILITY TO FEDERAL FACILITIES AND PHYSICIANS.—

''(1) IN GENERAL.—Subsection (a) applies to Federal health facilities (including hospitals) and actions by such facilities regarding the competence or professional conduct of physicians employed by the Federal Government to the same extent and in the same manner as such subsection applies to health care entities and professional review actions.

''(2) RELEVANT BOARD OF MEDICAL EXAMINERS.—For purposes of paragraph (1), the Board of Medical Examiners to which a Federal health facility is to report is the Board of Medical Examiners of the State within which the facility is located.''.

(B) APPLICABILITY TO FEDERAL HOSPITALS.—Section 425 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11135) is amended by adding at the end the following subsection:

''(d) APPLICABILITY TO FEDERAL HOSPITALS.—Subsections (a), (b), and (c) apply to hospitals under the jurisdiction of the Federal Government to the same extent and in the same manner as such subsections apply to other hospitals.''.

(C) MEMORANDA OF UNDERSTANDING.—Section 432 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11152) is amended—

(i) by striking subsection (b); and

(ii) by redesignating subsection (c) as subsection (b).

SEC. ___34. ADDITIONAL PROVISIONS REGARDING ACCESS TO INFORMATION; MISCELLANEOUS PROVISIONS.

(a) ACCESS TO INFORMATION.—Section 427(a) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137(a)) is amended to read as follows:

''(a) ACCESS REGARDING LICENSING, EMPLOYMENT, AND CLINICAL PRIVILEGES.—The Secretary (or the agency designated under section 424(b)) shall, on request, provide information reported under this part concerning a physician or other licensed health care practitioner to—

''(1) State licensing boards; and

''(2) hospitals and other health services organizations—

''(A) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner; or

''(B) to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.''.

(b) ADDITIONAL DISCLOSURES OF INFORMATION.—Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended by adding at the end the following subsection:

''(e) AVAILABILITY OF INFORMATION TO PUBLIC.—

''(1) REPORTS, GUIDELINES AND REGULATIONS.—

''(A) INITIAL REPORT.—Not later than 3 months after the date of enactment of the Health Care Liability Reform and Quality Assurance Act of 1995, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report that contains recommendations for improving the reliability and validity of such information.

''(B) GUIDELINES AND REGULATIONS.—Not later than 180 days after the date of enactment of the Health Care Liability Reform and Quality Assurance Act of 1995, the Secretary shall establish guidelines and promulgate regulations providing for the dissemination of information to the public under sections 421, 422, and 423 of the Health Care Quality Improvement Act of 1986. With respect to such guidelines and regulations the Secretary shall determine whether information respecting small payments reported under section 421 shall be disclosed to the public. In addition, the Secretary shall ensure that such information shall include information on the expected norm for information reported under such section 421 for a physician's or practitioner's specialty. Such expected norm shall be based on assessments that are clinically and statistically valid as determined by the Secretary, in consultation with individuals with expertise in the area of medical malpractice, consumer representatives, and certain other interested parties that the Secretary determines are appropriate.''.

(c) CONFORMING AMENDMENTS.—Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended—

(1) in subsection (b)(1), in the first sentence, by striking ''Information reported'' and inserting ''Except for information disclosed under subsection (e), information reported''; and

(2) in the heading for the section, by striking ''**MISCELLANEOUS PROVISIONS**'' and inserting ''**ADDITIONAL PROVISIONS REGARDING ACCESS TO INFORMATION; MISCELLANEOUS PROVISIONS**''.

Mr. WELLSTONE. Mr. President, I really look forward to what will be, I believe, broad-based support for this amendment.

I say to my colleague from Washington, my understanding is that, hopefully, we will be able to submit amendments tonight, there will be time for debate on Monday, and sometime Monday we hope there will be votes on these amendments; is that correct?

Mr. GORTON. Mr. President, the Senator from Minnesota is correct. That is what we are trying to do.

Mr. WELLSTONE. Mr. President, let me simply say that this amendment deals with the National Practitioner Data Bank. The data bank contains really important information on adverse actions that are taken against doctors, and in some cases information on actual payments made in malpractice judgements.

Mr. President, the problem is not most of the doctors in the country; most of the doctors are very good doctors. The problem is that this information right now is readily available to managed care plans and hospitals and medical societies but not available to consumers.

I have talked with a number of colleagues on both sides of the aisle. I think that this amendment which I have worked on for some time now really is an effort to provide consumers with this kind of information. I think it will be well received.

We have done some good work on, first of all, strengthening the data collection; good work in responding to some of the concerns that have been raised by doctors; very good work in terms of responding to concerns raised by consumers across the country and by many consumer organizations.

Mr. President, the idea, of course, is that we would ask the Secretary of HHS [Health and Human Services], within 6 months to develop essentially a plan to make sure that this information is available to consumers so that they could have some sense about the record of doctors who are treating them.

Unfortunately, sometimes, too many times—and I have some really heart-rendering testimony by citizens in the country that have, in a tragic way, been on the receiving end of this—you will have a doctor who will move, who will have had an adverse action taken against him by a State medical society or hospital as a result of whole patterns of malpractice, and then move to another State, and sometimes even change his name. Then the same kind of egregious practice is committed again at great harm to consumers. It happens too often.

There is just simply no reason why in this, if you will, more highly sophisticated data entry and computer age, we cannot make this information available to consumers.

I say to my colleagues, that we are not talking about cases in which somebody has just launched a complaint against a doctor. We are talking about cases where there has actually been an adverse action taken against a practitioner's license or clinical privileges or where there has actually been a malpractice payment made with the record being clear.

So I have submitted this amendment tonight, and I look forward to the debate on Monday.

In 3 months, the HHS Secretary comes back to the Senate and then 3 months after that, the Secretary of Health and Human Services then has to have promulgated regulations to disclose the information to consumers in a useable way.

So we have a real opportunity to do something that I think would be extremely important in preventing malpractice from taking place in the first place, which is really, I think, the goal of any kind of reform effort.

I yield the floor. I thank the Senator from Washington for his courtesy.

Mr. FEINGOLD addressed the Chair.

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

Mr. FEINGOLD. Mr. President, first of all, I note with interest the Senator from Minnesota's liberal interpretation of 2 minutes, as well. But it was well worth it when you listen to him, because I not only agree with his approach in this amendment, but his eloquence on the floor today and throughout this piece of legislation is a very important part of dealing with the amendment and dealing with what this bill is all about. So I appreciate his courtesy.

AMENDMENT NO. 603

Mr. FEINGOLD. Mr. President, I rise today to oppose the underlying amendment offered by the junior Senator from Kentucky. I do so on the same grounds that I oppose the underlying legislation.

This sort of liability reform is not needed, it is not justified, and it is certainly not fair to injured consumers and patients.

I am very glad I was on the floor a few moments ago to hear the junior Senator from West Virginia indicate his intention to move to table this underlying amendment. Even though we may disagree on the underlying legislation as a whole, I am pleased to see his consistent effort to make sure that this bill does not get completely out of control and try to revamp our entire civil legal system when we are supposedly debating one particular aspect of it.

Mr. President, I know that others have already spoken out against the underlying amendment and spoken directly to the question of how justified and how needed it is.

I would like to add my voice to this particular chorus and make two points about this amendment and the direction it is taking us.

First, I have to note with a lot of regret that the first issue raised in the new Republican Congress dealing with the tremendous health care dilemma this Nation is facing has to do with malpractice and health care liability reform.

We are not talking about providing universal health care coverage to all Americans. We are not talking about legislation that says if you get sick, you have a right to see a doctor. We are not you talking about providing community-based, long-term care for the elderly and people with disabilities. We are not talking about addressing the skyrocketing costs of prescription medicines so the elderly will no longer have to choose between their prescription drugs and their food and heating bills.

No, Mr. President, we are not talking about any of these issues that were so frequently debated by both parties last year. Everybody said they were important issues that merited our attention, but none of those have come forward in these months that we have been in the 104th Congress.

We are not talking about these issues because it is the belief of some on the other side that most of our health care problems are based on the so-called liability crisis faced by doctors and hospitals.

Mr. President, that is not to say it is not an important issue. That is not to say it does not deserve our attention in the broader context of health care reform. But I think that right now the 38 million Americans who do not have health insurance, if they hear this, must be saying, ''Are you kidding me?'' Because there are people who are walking around right now without health insurance at all. It might be the factory worker who has lost his job and his health insurance along with it. It might be the young mother who has a preexisting condition and is unable to find an insurer. It might be the young child who was paralyzed in an automobile accident and whose health benefits have run out because of an arbitrary cap.

Instead of addressing true reforms that would actually improve some of these situations, we are instead debating an amendment that would limit the judicial remedies of those who have been the victims of malpractice and negligence by a few bad actors in the health care profession. Proponents have compared it to the malpractice reforms passed by the State of California several years ago, and there seems to be some disagreement about the actual success of those reforms in terms of their effect on liability insurance premiums and also about the overall costs to the California health care system.

But there is one fact that cannot be disputed: Despite the so-called liability reforms in California, there are millions and millions of Californians

today who lack affordable and adequate health insurance. In fact, a recent study by the UCLA Center for Health Policy Research shows that there are 6.5 million Californians without health insurance; 6.5 million people in one State. There are more uninsured children, workers, and families in California than there are residents of my State, and my State is one of the top 20 States in population. Almost 23 percent of the State of California is currently uninsured, well above the national average of over 18 percent.

What does this tell us? It tells us that these kinds of liability reforms are not that much help to those who are most at risk in our health care system. And it tells us that suggesting liability reform is beneficial or central to health care consumers is a little bit farfetched.

But there is another point I want to make about this amendment. The supporters of this amendment have tried to make the argument that such reforms will save many health care dollars and, in the end, will be beneficial to all involved—health care consumers as well as doctors and administrators. This is analogous to the arguments put forth by supporters of the underlying legislation, that in the end, the reform on product liability laws will be of benefit to consumers as well as the manufacturers, who are principally to benefit.

But they certainly are not beneficial or fair to the victims of negligence in the health care system. It seems that just about every day you pick up a newspaper and there is a story of some horrible tragedy that was needlessly caused by negligence, error or even worse. One recent headline in the Washington Post reads: ''Hospital Gave Two Men Fatal Overdoses.'' This Associated Press story describes how a Boston hospital just recently disclosed an incident in 1991 where two skin cancer patients were mistakenly given overdoses of a treatment drug. They were, in fact, given three times the recommended dosages. Both men first lost their hearing, then their livers and kidneys failed. Within weeks, both men were dead.

According to this news account, there have been at least 10 chemotherapy dosage errors since 1990 in hospitals located in eastern Massachusetts. Six of those patients have died.

Mr. President, for me, it is the case of Karin Smith that most reminds me of the tragedies that often take place in the health care system and often needlessly.

Karin Smith was just 22 years old and an ambitious certified public accountant living in my State in Nashotah, WI, when she first went to her HMO concerned about some vaginal bleeding she had experienced of late. For 3 years, Karin tried to convince her doctors at her HMO that she was sick. She made 15 office visits and 10 phone calls.

At one point, she had bled for 35 straight days before passing out. During this time, the HMO took three Pap smears and sent them out to a clinical laboratory to be analyzed. Unfortunately, the results were misread.

How were they misread? It turns out that the director of the laboratory had paid the lab's technician on a piecework basis for reading Pap smears. In 1989, the technician had read 31,000 slides for the laboratory in question and another 16,000 slides for a different laboratory. That is a total of 47,000 slides just in 1989. The American Society of Cytology recommends a maximum of 12,000 slides a year for the sake of quality control.

So this person had overdone this practice to the detriment, potentially, of his or her ability to do the job right four times more than the recommended amount of slides.

In 1991, Karin left her HMO and saw a gynecologist outside of that plan. Within 2 weeks, her doctor correctly diagnosed Karin as having advanced cervical cancer. Last summer, Karin testified before a Senate subcommittee looking into the health care problems facing our country. I would like to read very briefly from the statement Karin gave that day, Mr. President. Karin said:

> Although the doctors at my HMO kept telling me I was basically OK, I knew better. My only alternative was to see a gynecologist outside of the plan, who immediately suspected I had cervical cancer. His suspicions were confirmed by a surgeon shortly after our initial visit.
>
> Had my cancer been diagnosed at the time the first Pap smear was misread by my HMO, I would have had a 95 percent chance of survival. However, due to their gross incompetence and shameful errors, I am now dying.
>
> I am only 28 years old and am told by my doctors that I will probably not live to see my 30th birthday. My cancer has spread through my lymphatic system, from my pelvis to my abdomen, and as of 2 weeks ago to my neck. The fifth vertebrae of my upper spine is so completely infiltrated with cancer that at any moment I may become paralyzed.
>
> Since my diagnosis 2½ years ago, my life has been consumed by one horrifying medical procedure after another. I have endured three separate courses of radiation, 6 months of inpatient chemotherapy and seven surgeries. At times, I have laid in a hospital bed, isolated from my family, friends, even my husband, because my immune system was so suppressed that a minor cold could destroy me, or my frail body was riddled with infection, or radioactive materials were implanted into my internal organs and I writhed in pain. . .
>
> Although the physical treatment has left me with disfiguring scars from my pelvis to my neck, the emotional scars cut much deeper. I'm so young, yet my career as a CPA is over. . . I'm married to a wonderful man, but I'll never bear his children. . . Our lives have been forever changed by this unnecessary and senseless tragedy.
>
> In addition to myself, several other women in the Milwaukee area have been forced to suffer this plight because of the HMO's gross failure to provide safe and competent medical care. One woman died last year, she was only 40. . . Her Pap smear was misread just like mine. Another woman, whose tests were also misread is just waiting to die.

Those are Karin's remarks. In September 1993, Karin Smith wrote an op-ed piece in the Milwaukee Journal on the very issue we are debating today, tort reform. Karin did some extensive research for this article and found that in Wisconsin, between the years 1976 and 1988, just four physicians accounted for nearly 18 percent of losses paid in claims.

In short, Karin discovered a trend in Wisconsin that reflected a national pattern, and that pattern is that a few bad actors in the health care field were causing a plurality of the problems. And instead of focusing on appropriate sanctions for these few individuals, we are instead considering limitations on the ability of injured consumers, such as Karin, to recover damages that will make them whole once again.

Mr. President, last year I met Karin Smith in the reception room a few feet from where I am right now. Today, Karin Smith is dead. Unfortunately, Karin's fight against her cancer has come to an end. Karin Smith passed away in March of this year. She was 29 years old.

On April 12, just weeks ago, the district attorney of Milwaukee County announced that he was filing criminal charges against the laboratory for the deaths of Karin Smith, as well as Dolores Geary, a 40-year-old mother of three who also was a victim of the laboratory's errors. This is believed to be the first time that a medical laboratory as opposed to a doctor has been charged with a crime. In this case the crime is reckless homicide.

Mr. President, I have spoken out today because Karin did everything in her power while she was alive to make her story known. She wrote letters to the newspaper; she testified before Congress, and she never stopped fighting for the rights of victims like herself. Karin Smith was the victim of not mere negligence or error but of reckless behavior by a few bad actors in what is otherwise an honorable and very dedicated profession.

In the Milwaukee Journal Karin wrote:

> It is a common perception that tort reform is strictly a battle between doctors and attorneys. What is painfully ignored is that victims are in the middle of this war. This is ironic, because these are the very people whom the tort system was designed to protect.

Mr. President, I could not have said it any better. It was designed to protect innocent consumers like Karin, the victims of that negligent behavior. Remedies should be available to make injured individuals whole again. It was not designed in order to protect the economic interests of those who are the cause of the injuries.

Mr. President, I think it is relevant to briefly comment on how the underlying McConnell amendment would have affected the case of Karin Smith. For starters, the McConnell amendment would extend the cap on punitive

damages that is contained in the underlying bill for product liability cases to cases of medical malpractice. That means that had she not reached a settlement, a Wisconsin State jury would have been prohibited by Federal law from awarding more than $250,000 or three times the economic harm in punitive damages.

Mr. President, what are Karin Smith's economic injuries? I am not sure, honestly. I do not know what the earnings of a CPA in her early twenties are. I know the parties involved should be punished for their actions, and, hopefully, with a strong enough sanction that will send a message to others in the health care system that such conduct will not be tolerated. In the end, this decision should be made by a jury in Wisconsin, comprised of everyday Americans, who for over 200 years have been capable of administering justice in a fair and equitable manner. Most importantly, how dare any Member of the U.S. Congress tell a Wisconsin jury that the appropriate punishment for the taking of Karin Smith's life must be no more than $250,000?

Where does this Congress get the right to make that decision? That is not all this amendment would do. The extension of the elimination of joint liability for noneconomic damages to medical malpractice cases is equally mortifying for individuals who find themselves in the same predicament Karin Smith found herself in. I cannot even begin to imagine, Mr. President, what Karin's noneconomic damages were—her pain, her suffering. How do you put a price tag or a cap, for that matter, on Karin's inability to bear children and raise a family? How do you quantify the pain and suffering associated with a cancerous growth that spreads from your pelvis to your neck? I am not sure I could. I do not envy any judge or jury that would be charged with the responsibility of calculating that.

But imagine if Karin's case had gone to trial, suppose the lab had misread Karin's test results and the HMO that sent the results to the lab were found to be liable in this case; suppose the lab became insolvent and was unable to pay the percentage of noneconomic damages that it was found to be responsible for? What would happen in that case under the underlying amendment? Should we watch out for the best interest of the HMO here and deny Karin her due compensation for the incredible degree of pain and suffering she went through? Should we say that the HMO is partly, if not largely, responsible for Karin's injury, and they must shoulder the responsibility for making sure that Karin and her family are adequately compensated?

I think when you ask these questions in terms of the real people involved, the right answers become quite clear. Karin Smith was right, Mr. President. This is not really a battle between lawyers and doctors. The medical profession in this country is outstanding and should not be maligned because of the foolish actions of a few in the health care system. We clearly have a health care crisis in this country. Millions and millions are uninsured, costs are skyrocketing, and the health of our Nation is being compromised. I strongly urge the supporters of this amendment to join with those of us who believe that we need comprehensive health care reform, and we need it now. Only that kind of real reform will solve the problems that this amendment claims to address.

Mr. President, I ask unanimous consent that two items be printed in the RECORD. The first is a statement that Karin Smith delivered at a Senate hearing last year, and the second item is the op-ed piece from the Milwaukee Journal in 1993.

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

STATEMENT OF KARIN SMITH

My name is Karin Smith and I am grateful for the opportunity to speak before this subcommittee on an issue that is so crucial to us all. Today, I want to share with you my personal story of how an HMO has cost me my life.

I am a member of a staff model HMO called Family Health Plan. It's headquartered in Milwaukee, Wisconsin and has 105,000 members.

I am 28 years old and have advanced cervical cancer, which is the direct result of a three year misdiagnosis by my HMO. For three years, which consisted of 15 office visits and 10 phone calls, I complained about gynecological problems I was experiencing. And even though my medical records were documented with the classic physical characteristics and symptoms of cervical cancer, no doctor at my HMO ever made the correct diagnosis.

Because of my continual complaints, the HMO did perform three biopsies and three pap smears. All of which indicated cancer. Yet, all but one were misinterpreted as benign by the lab my HMO had contracted with.

During those three years, my symptoms progressed rapidly. . . Minor bleeding became profuse, accompanied by fatigue and passing out. I was frustrated by the medical care I was receiving and I was scared by what appeared to be an obvious deterioration in my condition. Although the doctors at my HMO kept telling me I was basically okay, I knew better. My only alternative was to see a gynecologist outside of the plan, who immediately suspected I had cervical cancer. His suspicions were confirmed by a surgeon shortly after our initial visit.

Had my cancer been diagnosed at the time the first pap smear was misread by my HMO, I would have had a 95% chance of survival. However, due to their gross incompetence and shameful errors, I am now dying. I am only 28 years old and am told by my doctors that I will probably not live to see my 30th birthday. My cancer has spread, through my lymphatic system, from my pelvis to my abdomen and as of two weeks ago, to my neck. The fifth vertebrae of my upper spine is so completely infiltrated with cancer that at any moment I may become paralyzed.

Since my diagnosis two and a half years ago, my life has been consumed by one horrifying medical procedure after another. I have endured three separate courses of radiation, six months of inpatient chemotherapy and seven surgeries. At times I have laid in a hospital bed, isolated from my family, friends, even my husband, because my immune system was so suppressed that a minor cold could destroy me, or my frail body was riddled with infection or radioactive materials were implanted into my internal organs and I writhed in pain.

I have spent countless days and nights nauseated and sick from both the radiation and the chemotherapy. The chemotherapy alone, caused me to vomit almost every day for the six months I was in treatment. Every third week I would be admitted into the hospital for six days where drugs that made me so terribly sick would flow through my body. I was bald for nearly a year and all of my activities were severely restricted.

Next week, I am scheduled to begin radiation to the left part of my neck and under my left arm. One can only imagine, in fear, what the side effects to this treatment will be . . . And as my last hope, I am currently, awaiting news from my doctors to find out whether or not, I am a candidate for a bone marrow transplant.

Although the physical treatment has left me with disfiguring scars from my pelvis to my neck, the emotional scars cut much deeper. I'm so young, yet my career as a CPA is over . . . I'm married to a wonderful man but I'll never bear his children . . . My parents will outlive their youngest child . . . This hasn't only affected me. This has shattered the lives of everyone around me. How does one explain this to my husband, my parents, my sister and brother, my friends . . . All of our lives have been forever changed by this unnecessary and senseless tragedy.

At this point, my personal medical future is plagued by this nightmare. Now, I feel I must focus my concern on the medical future of our country. If we allow HMO's to be the foundation of the proposed medical system, we are encouraging one of the most important professions of our country, to put the financial interests of their bottom line before the medical needs of their patients.

It was no coincidence that the lab which was contracted by my HMO performed inferior work, the owner was on the HMO's board of directors and in order to retain the HMO's business, he was forced to ''meet or beat'' lab prices from the competition. I think that's what President Clinton now calls ''managed competition . . .'' ALl of the contracts will be negotiated this way.; It's a system that encourages the lab to provide services at artificially low prices, which leads to lack of quality control and excessive work loads.

To add insult to injury, the technician who misread all of my pap smears was reading 5 times the federally recommended number of slides. She also worked at, as many as, four other labs in Milwaukee at the same time. And when she was fired from my HMO's contracted lab for falsifying records in 1991, the HMO hired her directly to supervise their new in house gynecological laboratory.

In addition to myself, several other women in the Milwaukee area have been forced to suffer this plight because of the HMO's gross failure to provide safe and competent medical care. One woman died last year, she was only 40 . . . her pap smear was misread just like mine. Another woman, who's tests were also misread is just waiting to die.

We can't change my future. But I can give you a look into your own. I am an example of what health care in this country will become as proposed by the Clinton administration and it horrifies me. I have experienced, first hand, the overwhelming lack of continuity of care, lack of communication, lack of responsibility, lack of accountability and lack of humanity which are the hallmarks of managed care plans in this country today.

We all know that there is a serious health care crisis in this country . . . no one should

be denied access to care. We need a realistic, rational health care system that will prevent financially self interested groups from continuing to prey on unsuspecting medical consumers. We need a health care system that allows choice, provides accountability and incorporates a serious medical malpractice prevention program. As a victim of malpractice, I implore you . . . please do not let this administration strip away the rights of victims like me. Please let my HMO experience be your guide . . . Understand that managed care is part of our health care problem . . . It is not the solution.

[From the Milwaukee Journal, Sept. 15, 1993]

TORT REFORM ISN'T SOLUTION TO EASING HEALTH CARE WOES

(By Karin Smith)

The President's health care proposal is going to be released within the next few weeks. It is well known that tort reform will be included in his package. There is speculation that the proposed plan will limit pain-and-suffering awards for medical malpractice victims to $250,000. This would not only be unconstitutional, but grossly unfair.

Let me explain.

Five years ago, I was a healthy, 22-year-old woman. Today, I am a victim of both cervical cancer and medical mismanagement. In 1988, I belonged to Family Health Plan (FHP), a Milwaukee-based health maintenance organization. When I began to experience vaginal bleeding, I sought care from FHP.

Between June of 1988 and May of 1991, my symptoms gradually progressed from minor bleeding to profuse bleeding, to fatigue and passing out. During this time, I made nearly 20 calls to doctors within my HMO to complain of the problems. Also during this time, three Pap smears and three biopsies were performed.

Unfortunately, my cries for help were not heard, and all of my laboratory tests, with the exception of one Pap smear, were misread. When I left FHP in May of 1991 and sought the opinion of a gynecologist outside of that plan, my diagnosis was made within two weeks.

Since my diagnosis two years ago, I have undergone five surgeries, three separate two-month courses of radiation and six months of chemotherapy. I was recently informed that unless I have radical surgery this fall to remove a part of my spine and replace it with a piece of my rib, I will probably be paralyzed by spring.

Because of the three-year delay in diagnosis, my chance for cure has dropped from 95% to around 10%. Even if I am fortunate enough to survive this tragedy, I will be plagued with chronic health problems and a lifetime of uncertainty.

Few would disagree that this is an egregious case that has led to needless emotional and physical pain. Certain legislators and health care specialists believe that my non-economic damages should be limited to $250,000. The state Senate has passed a bill to that effect.

According to the Health Care Financing Administration, national health care expenditures total $675 billion. The American Medical Association says doctors pay $5.6 billion in medical insurance premiums. As an accountant, I can easily calculate the cost of malpractice premiums to be less than 1% of all health care expenditures. Even the Congressional Budget Office has said that changing the medical liability system will have little effect on total health spending.

Furthermore, several states have already placed caps on pain-and-suffering awards. History has shown this has not reduced malpractice premium expenses. The reality is that very few plaintiffs are awarded high amounts. In Wisconsin, almost 70% of claimants have received no payment at all, and only 85 claims have ever exceeded $200,000.

It is important to mention that our country could save an enormous amount of health care dollars by adopting a strict national policy for disciplining doctors.

In Wisconsin, between 1976 and 1988, the top 10 physician defendants accounted for 2.4% of the 2,904 claims filed and 23% of the total payments made. During this time, four physicians were involved in more than one claim over $400,000. The four physicians accounted for 17.8% of all losses paid in that year. Clearly, a small percentage of doctors is responsible for a large portion of claim dollars.

It is common perception that tort reform is strictly a battle between doctors and attorneys. What is painfully ignored is that victims are in the middle of this war. This is ironic, because these are the very people whom the tort system was designed to protect.

The issue of capping pain-and-suffering awards comes down to one question: Do we allow all citizens the right to a jury trial at which their peers decide a fair level of compensation for pain and suffering, based on the extent of the individual's damages and the facts?

If the answer is no, we are violating the constitutional rights of the most seriously injured victims, while protecting the careers of the most grossly negligent doctors.

Mr. FEINGOLD. I thank the Chair and I yield the floor.

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

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

Mr. DOLE. Mr. President, I advise my colleagues that it is our hope to have an agreement here in the next few minutes. And if the agreement is reached, then there will be no more votes this evening and no votes on Monday. There will be a number of votes starting at 11 o'clock on Tuesday morning, maybe as many as four or five.

So I indicate to my colleagues that I do not believe there will be any more votes this evening. We will know for certain in matter of minutes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, we have reached an agreement on the medical malpractice amendments. It has been cleared by the Democratic leader, Senator DASCHLE. I will now read the consent.

I ask unanimous consent that all amendments regarding medical malpractice only be in order for the duration of Thursday's session of the Senate and Monday's session of the Senate, except for one amendment each, which may be offered by the majority and minority leaders, or their designees.

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

Mr. DOLE. Mr. President, I further ask that any votes ordered on or in relation to the pending Thomas amendment, or on or in relation to the Wellstone amendment, and any other second-degree amendments that may be offered to the McConnell amendment occur in sequence at 11 a.m. on Tuesday, May 2, and that the final vote in sequence be on or in relation to the McConnell amendment No. 603, as amended, if amended.

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

Mr. DOLE. For the information of all Senators, this agreement means that any Senator who wishes to offer an amendment regarding medical malpractice must offer and debate that amendment today and/or Monday, and those votes will occur beginning at 11 a.m. on Tuesday, and thereafter medical malpractice amendments would no longer be in order to the bill except for an amendment that may be offered by each leader or their designee. I assume that would be the managers of the bill.

So having reached that agreement, I can announce there will be no more votes this evening. The Senate will not be in session tomorrow because both the Republicans and the Democrats have conferences tomorrow.

The Senate will come in at noon on Monday, be back on the bill on Monday. We may come in at 11 a.m. for morning business. There will be no votes on Monday, but we expect a lot of debate on Monday. And then rollcall votes will start at 11 a.m. on Tuesday.

Mr. GORTON. Mr. President, will the majority leader yield?

Will the Senate come in on Tuesday and have any time before 11 o'clock on Tuesday in which Members can speak to their amendments?

Mr. DOLE. I would be happy to make that arrangement. In other words, come in at 10:30 and speak for 5 minutes on amendments which we have already discussed. They can offer amendments on Monday.

Mr. GORTON. They can offer amendments on Monday. But I suggest to the leader that there be at least an hour before 11 o'clock for Members to summarize their amendments.

Mr. DOLE. We set aside the hour between 10 and 11 to discuss any of the amendments. We try to divide it up so everybody is treated fairly. We may come in at 9:30 for a half hour of morning business.

So there will be no more votes tonight. There will be no votes tomorrow, and no votes on Monday, except I assume there will be considerable debate on Monday. And then, as suggested by the Senator from Washington, Senator GORTON, there will be an hour set aside before the votes start for discussion of any of the amendments that may be offered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SIMPSON. Mr. President, I want to speak briefly in opposition to the pending product liability reform legislation. I have not been vigorous in the debate to this point because there has been so much vigor expressed that I thought I would simply wait for a calmer moment.

Let me assure all that it gives me no pleasure at all to be in the position of opposition to many of my good Republican colleagues on this issue. But I have a number of concerns about this legislation—always have had about this type of legislation—which I will just review briefly which compel me to oppose this measure.

Mr. President, like many of my colleagues, I was a lawyer by trade—as was my father, as was my grandfather, his father before him, and my two sons now; 100 years of Simpsons practicing law in the State of Wyoming and, in fact, practicing law in the same community in the State of Wyoming, Park County and Cody, WY. And so I take great pride in my profession. When I graduated from the University of Wyoming law school, I believed that the profession was very reputable, indeed honorable, and that it meant something, something ennobling, to be a lawyer.

And, indeed, I think there are few professions outside of the law where one has the opportunity to directly rectify an inequity or injustice. And this is, I feel, the motivation for many of us who entered the profession.

I remember doing lots of pro bono work. I remember charging 35 bucks an hour. I remember doing these things. I was in everything from replevining a one-eyed mule to reorganizing railroads, as the guy said. So I took great pride in the profession.

I believe the legislation before us addresses a concern that is very real. There are, indeed—and sadly so—serious abuses and excesses within the practice of law—the profession I love—as there are in every other profession. And one thing that has clearly worsened the public perceptions of our profession is action by a seemingly ever-increasing number of greedy—and that is the word, greedy, avaricious—attorneys who have used the profession solely for their own gain and not for the public gain. Their sole purpose, at least in some that I have observed, is padding their own particular bank accounts.

Time and again I hear accounts of attorneys who have charged many hundreds of dollars for preparing a simple will when the only thing they did was spend 5 minutes cranking the client's name into a computer-generated form. And these abuses do indeed occur. And there are the attorneys, I am sure, who take the 3-hour lunches and play the 18 holes of golf every day and still manage to make a million bucks or more during the course of a year.

The point I make in citing those examples is to note that one motive for this legislation is to attack irresponsible, costly behavior by those who practice law. But I would argue that this legislation specifically chooses to weed out the results of such ethical transgressions rather than to correct their root causes in the irresponsible practice of law. It is for lawyers to clean up their own act and to weed from their profession those who soil it and belittle it.

Assuredly, irresponsibility may lie behind some of the large awards that are given out in product liability suits. But it does not necessarily follow that the solution is to limit punitive damages so as to affect even those which may be properly arrived at and properly computed.

Particular concerns I have about such an approach include the preemption of State tort law and excluding joint and several liability. The latter measure could conceivably eliminate the only recourse of many citizens against substantial harm to their health, at no real cost to the unscrupulous in the legal profession.

I believe one of the better results of the November 1994 elections has been to arrest the concentration of power in Washington, and to begin a correction of transferring some of it back to the beleaguered States and localities. And we have done some of that already. Partly for this reason, I oppose any federalizing of the major areas of tort law. This certainly would expand the scope of Federal Government activity by assuming 10th amendment powers that have been properly under the jurisdiction of the individual States for more than 200 years.

We must remember that federalization of tort law would, in my mind, severely limit the local citizenry's ability to influence tort law at the local or State legislative level. Greater proximity to the individual citizen would allow us to make certain that the laws adopted are those which best serve the local community's best interest.

Federalization also sends the message that we in Congress do not trust the average citizen sitting on a jury to render a fair and equitable award. I can assure you I certainly do not agree with every award about which I have read and studied. But I just do not believe that the solution lies in taking that power away from the citizenry and in having the Federal Government fix the boundaries.

I also believe that a statutory limitation on punitive damages will remove a very key motivating factor that now forces companies to design the safest products possible. I in no way imply that American companies as a rule seek to design unsafe products. That would be absurd. But I do believe it would be very poor policy to fix and to limit the cost of such irresponsibility right up front in a way that could maybe be planned around.

And by that I mean by limiting punitive damages and setting a figure could—could—result in company officials developing liability scenarios of what they expect to lose from such suits and to ring it up on the scorecard. A hypothetical, unscrupulous company could calculate: ''Well, if we make modification A here in the product, we project only 500 people a year will be injured, or some killed. That would still result in a 20 percent yearly profit margin, even after paying the maximum punitive damages for every one of these injuries or lost lives.''

Now, is that a pipe dream? I do not know. Possibly so. I do not know. But it is unseemly to me to facilitate the attachment of dollar values potentially to the cost of human lives.

As a general principle, I believe it is clear that more often than not prescribing local actions at the Federal level does not work—that ''one size fits all'' is not a practical approach.

Let us not, therefore, repeat the mistakes of other recent Congresses, and instead leave alone an area which is traditionally under the purview of the States.

So let us address the real root of the problem that is found in the legal profession itself—and there are plenty of them, and, I must say, they are grievous in many cases. But it is not in the legal system's infrastructure. It is in the legal profession itself. And the legal profession evolved as a means of protection for our citizens from its beginning.

I hear often the quote from Shakespeare, ''Kill all the lawyers.'' Well, there was a reason for that request and that admonition. And that was if they got the lawyers out of the way, they could get on with their nefarious conduct. You want to reread that one.

And that is an interesting part of that remarkable phrase in Shakespeare: Kill all the lawyers; because they could not get done what they intended to do if the lawyers had been there to protect.

So I just wanted to share those things. I am well aware of what is going to happen to lawyers in this session of the Legislature. I wish there were always the most pristine reasons for that, but one of the most vivid ones in a political body will be simply the fact that the trial lawyers of America

and affiliates gave $1,626,000 to those of the other faith in the 1994 election and only $101,000 to those of our faith, and they are looking for them, hunting them down.

So we have to be a little careful in that atmosphere, I would suggest. Not only did they bet on the wrong horse, they bet everything they had on all of the horses, and they all went backward down the track. That is a part of this that we want to keep in mind, that in the spirit of punishing the trial lawyers who showered forth their worldly goods upon those of the other faith, that we do not react in a way which is injurious to a profession that has protected us all. We all hate lawyers, except we love the one that represents us. Just like politicians, they have a lot of disgust for us, except for those who represent them.

So I want to share those views and indicate my opposition to the measure, which has been consistent throughout my time here. I thank the Chair.

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I ask unanimous consent to set aside the pending Wellstone amendment.

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

AMENDMENT NO. 608 TO AMENDMENT NO. 603

(Purpose: To limit the amount of punitive damages that may be awarded in a health care liability action)

Ms. SNOWE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes an amendment numbered 608.

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

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

The amendment is as follows:

On page 14, line 22, insert:

In section 15 of the amendment, strike subsection (e) and insert the following new subsection:

(e) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in a health care liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

Ms. SNOWE. Thank you, Mr. President. This legislation, unlike any other we have debated this year, touches each and every one of our daily lives. It touches our society as few bills do. In our homes. In our schoolrooms, In our work rooms. And in our hospital rooms.

There is a compelling case for product liability reform in this country, and this bill provides for a positive foundation on which we can build in the future. It may not be the end-all to the liability reform debate. And it is not a panacea to the legal labyrinth that millions of Americans have found themselves caught in at some time in their lives.

But it is a critical and long overdue first step in the process.

Mr. President, many Americans may ask a very simple question as we begin this debate, and that is this: In this time of downsizing Government and devolving power back to the States, why do we need Federal legislation on product liability?

It is a good question that merits a good answer.

The problem involves a vast patchwork of product liability laws in 50 States and the District of Columbia that send confusing and often conflicting signals to those who make, sell, or use products in the United States. Moreover, it is the uncertainty of this product liability system that creates unnecessary legal costs, impedes interstate commerce, and stifles innovation. And it unnecessarily places consumers—those we are trying to protect—at risk.

Despite recent product liability reforms in various States around the country, there is still an overriding and strong need for a protective, uniform, and all-encompassing Federal product liability law.

The problem with State product liability legislation—apart from the simple fact that different States have different rules—is that State legislation cannot capture or control the product liability problem outside its own borders.

Every suit filed and every judgment rendered has a potential impact on every other consumer in America by leading to possible changes in the product itself, increasing the item's price, and potentially affecting the price and availability of a wide range of other products. In extreme cases, manufacturers may even cease production of some products.

Even States in which product liability lawsuits are infrequent and judgments have been deemed appropriate are not immune from the impact of disparate State laws. I am proud to say that in my home State of Maine, it has been said that our jury verdicts have been reasonable and our judges fair. But the effect of the judgment in one State is shouldered by the consumers of that product in every other State. Therefore, the State of Maine residents pay a premium on every product they buy that has come in from outside the State of Maine—and on every product they buy from a local company that also distributes outside our State's borders.

The simple fact is that the residents of Maine are impacted by the product liability laws of every other State. And just as States cannot single-handedly address the problems caused by our spiraling national debt, they cannot address the national product liability problem. I have come to the conclusion that a Federal product liability law is the only mechanism to assure that a fair and uniform law will apply evenly throughout the United States.

I also recognize the role that uniformity plays in protecting the common good in certain circumstances. Civil rights laws and many environmental laws reflect the understanding that serving the common good may be best accomplished by maintaining similar standards across State borders. Not every issue affecting both States warrants a Federal standard, but some issues are pervasive enough—significant enough—that we cannot help but recognize the need for some level of agreement.

Mr. President, as a member of the Commerce Committee, I certainly have stressed the need for balance in this legislation and I offer my own personal check-list of the issues this legislation must address so that it is fair and equitable.

First, we must allow safe consumer products to be developed to meet consumer needs, and ensure that consumers can seek reasonable compensation when injuries and damages occur.

Second, the law must dissuade consumers from filing lawsuits frivolously, without discouraging Americans with substantive complaints from filing their own suit.

Third, a uniform law must encourage companies to police the safety of their own products, both by offering incentives for excellence in safety and strong punishment when product safety is breached.

Lastly, and perhaps most importantly, one of our fundamental goals must be to ensure this legislation protects the interests of the average American consumer who makes hefty use of products, but knows little of their innate safety or risk—much less their rights under the law.

Although I believe the call for product liability reform is justified, I certainly understand the concerns of those who testified before the committee regarding the potential discriminatory impact of this bill—particularly the dual standards created within the cap on punitive damages.

To understand the issue of a punitive damage cap, I think it is valuable to remember what punitive damages are—and are not. Punitive damages are punishment that serve an invaluable role in deterring quasi-criminal behavior by businesses. They have nothing to do with providing compensation to a person who has been harmed and are not intended in any way to make the plaintiff whole.

That purpose is served by compensatory damages, which provide recovery for both economic damages—which include lost wages and medical expenses—and noneconomic damages, which include pain and suffering and other losses.

However, I also understand the concerns of those who would contain runaway juries by capping punitive damages. One of the overriding problems in our current system is the absence of any consistent, meaningful standards for determining whether punitive damages should be awarded and—if so—in what amounts.

The absence of consistent standards not only leads to widely disparate and runaway punitive awards, but it also affects the settlement process. Individuals and companies that are used often face a catch-22: pay high legal fees to fight a case through trial, verdict, and appeal—or simply settle out of court for any amount less than these anticipated legal fees.

Even for the defendant who recognizes the cost of proving innocence to be too great, or simply hopes to avoid the lottery nature of a possible punitive award—seeking a settlement carries a hidden cost. The lack of a uniform national standard—or simply the existence of vague State standards—forces the defendant to include a punitive premium in their settlements, even when the likelihood of a punitive award is small or even nonexistent.

The high reversal rate of punitive damage awards underscores the absence of clear and understandable rules. Moreover, appealing the initial award is extremely costly and unnecessarily wasteful of both private and judicial resources. Although businesses and related entities pay the initial price of punitive awards, the impact of runaway awards is felt by consumers who pay higher prices in goods and services.

And health care is not different. Malpractice is an issue that should concern every American because it directly impacts the amount of money they pay for health care and their access to care. A 1993 Lewin-VHI study estimates that the combined cost of physician and hospital defensive medicine to be as high as $25 billion. And the 1994 Physician Payment Review Commission Annual Report to Congress noted a ''widespread concern that the current functioning of the malpractice system may promote the practice of defensive medicine and impeded efforts to improve the appropriateness and cost effectiveness of care.''

Access to quality care was an issue that received a great deal of attention—as well it should—over the last 2 years as Congress looked at ways to reform our health care system. The cost of malpractice has a direct impact on access to care, especially for women. A 1990 survey found that liability concerns caused 12 percent of doctors to give up their obstetrical practices, 24 percent to reduce their treatment of high-risk patients, and 10 percent to reduce their number of deliveries.

Concern has been expressed this afternoon during the debate that this is a matter that should be left up to the individual States. But the American taxpayers from Maine to Oregon have a direct stake in malpractice reform because the U.S. Government—in other words the American taxpayer—pays 32 percent of all the health care costs in this country. They are already paying a heavy price for the patchwork system of malpractice laws that currently exist and they deserve our best effort to provide a uniform standard that will help bring down the cost of health care and help ensure access to providers.

As we establish a cap, it is vital that we ensure the measure we choose is fair, uniform, acts as adequate punishment, and serves as an effective deterrent. I believe the amendment I have offered accomplishes all of these objectives.

I should mention that Senator GORTON, the primary sponsor of this legislation, has indicated that he will certainly support my amendment. And I thank the underlying sponsors, Senator MCCONNELL and Senator KASSEBAUM, for their support as well for this amendment.

My amendment is fair because it is blind to the socioeconomic position of the plaintiff. The current cap contained in the McConnell amendment would cap punitive damages at the greater of $250,000 or three times economic damages.

Economic damages—again—are the out-of-pocket expenses incurred by the plaintiff, such as their lost wages and medical expenses. Although this measure might serve as adequate punishment and act as an adequate deterrent in many cases, it relies too greatly on the economic position of the plaintiff in establishing a sufficient level of punishment.

I believe that all plaintiffs—regardless of their income—must be in a position to levy adequate punishment on those medical providers who have performed a particularly egregious act. We must not allow a medical provider to suffer only a slap on the wrist because his conduct harmed an individual of modest means.

As a very basic example, assume that two individuals—a truck driver with an annual income of $24,000 and one a corporate executive with an annual income of $1.2 million—suffer from similar medical malpractice injuries from two separate defendants and are each hospitalized for 1 month due to these injuries. Further assume that the medical expenses for these individuals are nearly identical at $100,000—an amount I am sure is far too low.

Under the three times economic damages formula, the potential punitive damage award—or punishment—that could be levied in the suit involving the millionaire would be up to approximately $600,000. This would be derived by adding the individual's lost income—$100,000—with his or her medical expenses—$100,000—and multiplying by three.

Conversely, the defendant in the lawsuit involving the truck driver could only be subjected to punitive damages of up to $306,000—or 51 percent that of the millionaire's defendant. This amount is derived by trebling the sum of the plaintiff's lost wages—$2,000—and medical expenses $100,000.

Although some would argue that the lower cap imposed in the suit involving the truck driver may serve as sufficient punishment, I believe it is fundamentally unfair. If the language of my amendment is adopted, the potential punitive award in the suit involving the truck driver will be far more in line with that of the millionaire. By including noneconomic damages—which are less tangible and include pain and suffering and the loss of one's eye, hand, or other faculty—the discriminatory effect of the cap will also be removed.

Continuing with the example already described, let us further assume that the jury award for noneconomic damages caused by the loss of one of the plaintiff's eyes is $500,000 for both the millionaire and the truck driver.

Using the two times compensatory measure, the possible punitive award would be $1.2 million for the millionaire and $1.004 million for the truck driver. In this way, the possible punitive award that could be imposed is nearly identical in both cases as the cap for the truck driver is 84 percent the size of the millionaire's cap.

Although hard statistics on this issue are difficult to find, the 1989 General Accounting Office report on product liability found that there was a strong correlation between the size of punitive awards and the size of compensatory damages. Excluding one extreme case in which compensatory damages far exceeded punitive damages, the punitive damages had a correlation of 0.71 with compensatory damages—which is just shy of a one-to-one ratio.

Although each of the five States contained in the study had varying levels of correlation, this average demonstrates that a reasonable cap based on compensatory damages can be drafted.

The Supreme Court has also expressed its concern with the manner in which punitive damages have been awarded—and lends credence to the argument in favor of a uniform cap. In the case of Pacific Mutual Life Insurance Company versus Haslip, the Supreme Court found that a four-to-one ratio of compensatory to punitive damages was ''close to the line'' of being unconstitutional, and expressed a strong concern that punitive damages in the United States have ''run wild.'' Similar sentiments were expressed in TXO Production Corp. versus Alliance Resources Corp., a case involving a commercial land dispute.

In both cases, Justices made clear that this was an area for reasonable and rational reform. Although no clear standard was identified, I believe the measure of two times compensatory damages would be deemed appropriate by the Supreme Court.

Finally, the American College of Trial Lawyers [ACTL]—a respected organization of experienced plaintiff and defense attorneys—recommended a cap based on a two times compensatory damages in their 1989 report on punitive damages.

The ACTL report also recommended that the two times compensatory damage cap be combined with a minimum cap of $250,000, but I do not believe such a measure is advisable or necessary. I believe a single measure—such as the measure contained in my amendment—is the most easily understood and ensures that all relevant cases are subject to the same standard. Multiple measures and standards imply that there is an imbalance in the formula being utilized.

I believe the measure of two times compensatory damages will work for everyone and will subject egregious offenders to strong punishment. This standard is fair and nondiscriminatory. It will apply to all litigants equally—whether you are a man or woman, wealthy or poor, a child or an adult.

Mr. President, if we have to include a cap on punitive damages in this legislation, we must ensure it is the best cap possible. So I ask my colleagues to join me in support of this amendment to the McConnell amendment today, and during further consideration of the underlying bill next week, because I do intend to offer this very same amendment to the underlying legislation as well.

I think the legislation, which is named the Product Liability Fairness Act, must live up to its name and therefore I think that my amendment will correct this discriminatory impact of punitive damages as it is currently drafted in this amendment as well as the underlying bill.

I believe my amendment is the best alternative available and I encourage my colleagues to support it.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I ask to speak in morning business and use part of my leader time to do so.

The PRESIDING OFFICER. The Senator has that right.

COUNTERTERRORISM INITIATIVE

Mr. DASCHLE. Mr. President, the day after the tragic bombing in Oklahoma City, when it became more evident that the terrorist attack was launched by Americans, President Clinton said he would seek prompt action on counterterrorism proposals he had already made, and promised to develop additional tools for Federal law enforcement to use.

Yesterday evening, the President hosted a meeting of the bipartisan congressional leadership to present his proposals and ask for timely, bipartisan consideration and enactment.

The President's proposals result from the well-considered experience of Federal law enforcement officials. They are designed to provide the additional legal authority Government needs to effectively combat terrorism, whether domestic or foreign.

These additional authorities will give Federal law enforcement agencies tools to combat terrorism more effectively without undermining or curtailing the constitutional rights of law-abiding American citizens.

Briefly, the proposal would extend the authority the FBI now has in national security cases to access credit reports and financial data for counterterrorism investigations.

The same standards as now apply in routine criminal cases would be used in counterterrorism cases for the orders that permit the FBI to use pen registers and trap-and-trace devices in investigations. These devices are not wiretaps; they simply capture phone numbers dialed, like a caller ID device that many people use in their own homes.

It would require hotel and motel operators and common carriers to provide records to the FBI for national security cases as they now routinely do for State and local law enforcement purposes.

It would fully fund the costs of implementing the digital telephony law, so that the ability of law enforcement to carry out court-authorized electronic surveillance would not be impeded by the shift to digital transmissions.

It would add 1,000 additional agents, prosecutors, and other personnel to increase the resources devoted to counterterrorism investigations, and establish an interagency counterterrorism center that would make sure the information and expertise of all Federal law enforcement agencies in this field are properly integrated in investigations.

It includes practical issues such as the requirement that chemical taggants be included in the raw materials from which explosive charges are created. This is essential to tracing the sources of such explosions as the one in Oklahoma City in the future.

Additionally, the proposal would enhance the penalties for crimes related to explosives, and directed against Federal employees. The proposal has been released by the White House, so all my colleagues have the opportunity to review these proposals in detail.

In addition, the President asked that we approve the Omnibus Counterterrorism Act of 1995, legislation which is primarily directed at foreign terrorists.

This package of proposals, along with the existing legislation, are carefully designed to give additional tools to law enforcement without weakening in any way the constitutional rights of any American.

The President has been particularly clear that we will fight against terrorists at home and abroad with all constitutional tools. Anything less would give the terrorists the victory over us that they seek: They would have destroyed the fundamental rule of law in our country.

As Americans, we all understand that we cannot and must not allow the cowardly attack on civilian Federal workers to incite us to such anger that we take shortcuts with American citizens' rights.

The President's proposals are sound, moderate, and effective. They reflect the advice of practical, hands-on law enforcement agents who have experience in this field. They deserve careful and thorough review by the Congress, and they deserve timely enactment.

It had been the President's hope, and mine as well, that on this matter, where there is truly broad agreement across partisan lines, the Congress could work in a bipartisan fashion to enact this package of security enhancements in the not too distant future.

I also hoped that we could have a bipartisan, narrowly tailored package of proposals that could be enacted without divisive debates over controversial issues of long standing.

I believe that the American people expect us to put partisanship and political advantage aside and respond with unity to the immediate and urgent needs of Federal law enforcement agencies.

Last night, at the meeting with the President, there was every indication that there would be a bipartisan, focused proposal on which Congress and the President could agree to move us forward in the effort to combat terrorism. Each of us in attendance pledged our support toward that end. Regrettably, today the majority leader introduced a bill that threatens to slow our progress and mire the Senate in divisive, partisan, rhetorical debate.

Americans know that we can and undoubtedly will debate matters such as habeus corpus reform later this year. We have debated the issue in virtually every Congress in the past decade. But that debate involves persons who are already incarcerated with no chance for parole and who no longer pose a threat to society.

I think this is a time when we should instead be concentrating on measures that will have an effect on those who may be planning an attack, and from whom we are not at all safe, as the bombing in Oklahoma City so dramatically proved last week.

I sincerely hope prompt action on these needed law enforcement tools will not be held hostage to political priorities. I believe Americans expect more of us. I know the Federal workers who lost their lives and their children certainly deserve that and more.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, pending one other matter of business, I am going to ask for some unanimous-consent agreements that have been cleared with the minority and represent the minority's position as well as the majority leader's position.

TO PREVENT AND PUNISH ACTS OF TERRORISM

Mr. KYL. Mr. President, I understand that Senate bill, S. 735, introduced earlier today by Senators DOLE and HATCH is at the desk.

The PRESIDING OFFICER. That is correct.

Mr. KYL. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The assistant legislative clerk read as follows:

A bill (S. 735) to prevent and punish acts of terrorism, and for other purposes.

Mr. KYL. I now ask for its second reading, and the minority leader objects.

The PRESIDING OFFICER. Objection is heard, and the bill will lay over and will receive its second reading on the next legislative day.

EULOGIES FOR THE LATE SENATOR JOHN STENNIS OF MISSISSIPPI

Mr. KYL. Mr. President, I ask unanimous consent that all Senators have until the close of business on May 10, 1995, to submit eulogies for our former colleague, the Senator from Mississippi, Mr. Stennis, and that at that time eulogies be printed as a Senate document.

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

RETIREMENT OF THE SENATE ENROLLING CLERK, BRIAN HALLEN

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 112 submitted earlier today by Senators DOLE, and DASCHLE concerning the retirement of Brian Hallen, the Senate enrolling clerk.

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

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 112) commending the Senate Enrolling Clerk upon his retirement.

The Senate proceeded to consider the resolution.

BRIAN HALLEN RETIREMENT

Mr. DOLE. Mr. President, Brian Hallen, the Senate Enrolling Clerk, will retire from the Senate effective May 26, 1995, after almost 30 years of Government service. Brian's Government career started in January 1966 as a linotype operator at the Government Printing Office. He later became a proofreader and in 1975 was detailed to the Office of the Senate Enrolling Clerk. In December 1981, he became the Senate's first Assistant Enrolling Clerk, a position he held until March 1986 when he was promoted to his current position as the Senate Enrolling Clerk.

Brian has dedicated his Senate service to improving the operation of the Enrolling Clerk's office and has gladly and efficiently assisted in an ongoing effort to reduce congressional printing costs. During his tenure many innovative and cost-saving changes have been implemented. Among his accomplishments was the computerization of the very detailed engrossing and enrolling process. This enabled his office to have complete control over the accuracy and efficiency of the work and a substantial reduction in the cost and amount of time necessary to produce the printed legislation.

Brian is retiring with the satisfaction of knowing that he has done his best. His decisions were made with the best interests of the Senate in mind, and because of that mindset the institution itself is a better place.

I know all Senators will join me in thanking Brian for his long, dedicated, and distinguished service, and extending our best wishes for a long and healthy retirement.

Mr. DASCHLE. Mr. President, today marks the end of the Senate career of Brian Hallen, the Senate Enrolling Clerk.

Brian began his career of Government service in January 1966 as a linotype operator at the Government Printing Office. Over the years, he assumed other positions in the Government and eventually in 1981, became the Senate's first Assistant Enrolling Clerk.

Brian served admirably as Assistant Enrolling Clerk and was promoted to the position of Enrolling Clerk in 1986. As the Assistant Enrolling Clerk and as Enrolling Clerk, Brian has had the Arduous task of ensuring the accuracy of every provision—sections and titles—of the bills enacted by this body.

During the appropriations season, I understand that on many occasions, prior to the innovations of computerization, Brian could be found in his office burning the midnight oil working diligently on appropriations bills—checking and double checking—making sure every ''t'' was crossed and every ''i'' dotted—to ensure that the product that was delivered to the House or to the White House was an actual reflection of the Senate's work.

I applaud him for the fine service he has given to this body and to his country. The Senate is a better place because of people such as Brian Hallen.

As Brian retires after almost 30 years of Government service, I wish him the very best and say ''Thank you'' for your many years of service and for your dedication to this institution.

I am sure all of my colleagues join with me in saying ''have a long and happy retirement,'' and ''Good luck.''

Mr. KYL. Mr. President, I ask unanimous consent that the resolution be considered and agreed to, that the preamble be agreed to, and that the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the record.

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

So, the resolution (S. Res. 112) was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 112

Whereas Brian Hallen will retire from the United States Senate after almost 30 years of Government service;

Whereas he served the United States Senate for over 20 years; the last 9 years as the Enrolling Clerk;

Whereas his dedication to the United States Senate resulted in the computerization of the engrossing and enrolling process;

Whereas he has performed the duties of his office with remarkable diligence, perseverance, efficiency and intelligence;

Whereas he has faithfully performed his duties serving all Members of the Senate and House of Representatives with great professional integrity; and

Whereas Brian Hallen has earned the respect, affection and esteem of the United States Senate: Now, therefore, be it

Resolved, That the United States Senate commends Brian Hallen for his long, faithful and exemplary service to his country and to the Senate.

SEC. 2. The Secretary shall transmit a copy of this resolution to Brian Hallen.

COLORADO RIVER BASIN SALINITY CONTROL AMENDMENTS ACT

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 46, S. 523.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 523) to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. AMENDMENTS TO THE COLORADO RIVER BASIN SALINITY CONTROL ACT.

The Colorado River Basin Salinity Control Act (43 U.S.C. 1571 et seq.) is amended—

(1) in section 202(a)—

(A) in the first sentence—

(i) by striking ''the following salinity control units'' and inserting ''the following salinity control units and salinity control program'; and

(ii) by striking the period and inserting a colon; and

(B) by adding at the end the following new paragraph:

''(6) A basinwide salinity control program that the Secretary, acting through the Bureau of Reclamation, shall implement. The Secretary may carry out the purposes of this paragraph directly, or may make grants, commitments for grants, or advances of funds to non-Federal entities under such terms and conditions as the Secretary may require. Such program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources that the Secretary considers appropriate. Such program shall provide for the mitigation of incidental fish and wildlife values that are lost as a result of the measures and associated works. The Secretary shall submit a planning report concerning the program established under this paragraph to the appropriate committees of Congress. The Secretary may not expend funds for any implementation measure under the program established under this paragraph before the expiration of a 30-day period beginning on the date on which the Secretary submits such report'';

(2) in section 205(a)—

(A) in paragraph (1) by striking ''authorized by section 202(a) (4) and (5)'' and inserting ''authorized by paragraphs (4) through (6) of section 202(a)''; and

(B) in paragraph (4)(i), by striking ''section 202(a) (4) and (5)'' each place it appears and inserting ''paragraphs (4) through (6) of section 202'';

(3) in section 208, by adding at the end the following new subsection:

''(c) In addition to the amounts authorized to be appropriated under subsection (b), there are authorized to be appropriated $75,000,000 for subsection 202(a), including constructing the works described in paragraph 202(a)(6) and carrying out the measures described in such paragraph.''; and

(4) in subsection 202(b)(4) delete ''units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5)'' and insert in lieu thereof ''units authorized to be constructed or the program pursuant to paragraphs (1), (2), (3), (4), (5), and (6).''.

AMENDMENT NO. 610

(Purpose: To make technical correction in the authorization of appropriations for the Colorado River Basin salinity control program)

Mr. KYL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Arizona [Mr. KYL], for Mr. DOMENICI, proposes an amendment numbered 610.

The amendment is as follows:

On page 7, strike ''such paragraph'' on line 1, and insert the following: ''such paragraph. Notwithstanding subsection (b), the Secretary may implement the program under paragraph 202(a)(6) only to the extent and in such amounts as are provided in advance in appropriations Acts.''

Mr. KYL. Mr. President, I ask unanimous consent that the amendment be agreed to, that the committee substitute be agreed to, as amended, that the bill be deemed read a third time, and passed, and that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So, the amendment (No. 610) was agreed to.

So the bill (S. 523), as amended, was deemed read a third time, and passed as follows:

[S. 523 was not available for printing. It will appear in a future issue of the RECORD.]

CHACOAN OUTLIERS PROTECTION ACT

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 42, H.R. 517.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 517) to amend title V of Public Law 96–550, designating the Chaco Culture Archeological Protection Sites, and for other purposes.

The Senate proceeded to consider the bill.

Mr. KYL. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, and the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (H.R. 517) was deemed read a third time and passed.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–729. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 92–82; to the Committee on Appropriations.

EC–730. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, a draft of proposed legislation to extend, reauthorize and amend the Defense Production Act of 1950; to the Committee on Banking, Housing, and Urban Affairs.

EC–731. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report relative to a transaction with a Bermuda company; to the Committee on Banking, Housing and Urban Affairs.

EC–732. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the annual report for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–733. A communication from the Chairperson of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, transmitting, pursuant to law, the annual report for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–734. A communication from the Chairman of the Federal Financial Institutions Examination Council, transmitting, pursuant to law, the annual report for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–735. A communication from the Acting Director of the Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, notice of the details of the compensation plan for calendar year 1995; to the Committee on Banking, Housing, and Urban Affairs.

EC–736. A communication from the Acting Director of the Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the annual consumer report for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–737. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report of the evaluation of the Home Equity Conversion Mortgage Insurance Demonstration; to the Committee on Banking, Housing, and Urban Affairs.

EC–738. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on the Interstate Land Sales Registration Program for calendar years 1993 through 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–739. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on seismic safety property standards; to the Committee on Banking, Housing, and Urban Affairs.

EC–740. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on community development programs; to the Committee on Banking, Housing, and Urban Affairs.

EC–741. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report relative to a transaction involving exports to the People's Republic of China; to the Committee on Banking, Housing and Urban Affairs.

EC–742. A communication from the Acting Director of the Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report on the preservation of minority savings associations; to the Committee on Banking, Housing, and Urban Affairs.

EC–743. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation entitled ''The National Defense Authorization Act for Fiscal Year 1996''; to the Committee on Armed Services.

EC–744. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report on direct spending or receipts legislation within 5 days of enactment; to the Committee on the Budget.

EC–745. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report on direct spending or receipts legislation within 5 days of enactment; to the Committee on the Budget.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 225. A bill to amend the Federal Power Act to remove the jurisdiction of the Federal Energy Regulatory Commission to license projects on fresh waters in the State of Hawaii (Rept. No. 104–70).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with amendments:

S. 359. A bill to provide for the extension of certain hydroelectric projects located in the State of West Virginia (Rept. No. 104–71).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 421. A bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Kentucky, and for other purposes (Rept. No. 104–72).

S. 461. A bill to authorize extension of time limitation for a FERC-issued hydroelectric license (Rept. No. 104–73).

S. 522. A bill to provide for a limited exemption to the hydroelectric licensing provisions of part I of the Federal Power Act for certain transmission facilities associated with the El Vado Hydroelectric Project in New Mexico. (Rept. No. 104–74).

S. 538. A bill to reinstate the permit for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Oregon, and for other purposes (Rept. No. 104–75).

S. 549. A bill to extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas (Rept. No. 104–76).

S. 737. An original bill to extend the deadlines applicable to certain hydroelectric projects, and for other purposes (Rept. No. 104–77).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with amendments and an amendment to the title:

S. 395. A bill to authorize and direct the Secretary of Energy to sell the Alaska Power Marketing Administration, and for other purposes (Rept. No. 104–78).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND (for himself and Mr. NUNN) (by request):

S. 727. A bill to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes; to the Committee on Armed Services.

By Mr. THURMOND (for himself and Mr. NUNN) (by request):

S. 728. A bill to authorize certain construction at military installations for fiscal year 1996, and for other purposes; to the Committee on Armed Services.

By Mr. BAUCUS (for himself and Mr. LOTT):

S. 729. A bill to provide off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, that if one Committee reports, then the other Committee have 30 days to report or be discharged.

By Mr. CHAFEE:

S. 730. A bill to amend title 38, United States Code, to provide that receipt of disability compensation for dependents not depend upon the waiver of receipt of an equal amount of retired pay; to the Committee on Veterans Affairs.

S. 731. A bill to amend title 38, United States Code, to provide that the reduction by waiver of retired pay due to reciept of compensation or pension not apply to retired pay attributable to pay for extraordinary heroism; to the Committee on Veterans Affairs.

By Mrs. BOXER:

S. 732. A bill to amend chapter 81 of title 5, United States Code, to prohibit Members of Congress from receiving Federal workers' compensation benefits for injuries caused by stress or any other emotional condition, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ROTH (for himself, Mr. BIDEN, Mr. JEFFORDS, Mr. LEAHY, Mr. MOYNIHAN, Mrs. MURRAY, Mr. CHAFEE, Mrs. BOXER, Mr. COHEN, and Mr. LAUTENBERG):

S. 733. A bill to amend title 23, United States Code, to permit States to use Federal highway funds for capital improvements to, and operating support for, intercity passenger rail service, and for other purposes; to the Committee on Environment and Public Works.

By Mr. REID (for himself and Mr. BRYAN):

S. 734. A bill to designate the United States courthouse and Federal building to be constructed at the southeastern corner of Liberty and South Virginia Streets in Reno, Nevada, as the ''Bruce R. Thompson United States Courthouse and Federal Building'', and for other purposes; to the Committee on Environment and Public Works.

By Mr. DOLE (for himself, Mr. HATCH, Mr. NICKLES, Mr. THURMOND, Mr. SIMPSON, Mr. BROWN, Mr. KYL, and Mr. GRAMM):

S. 735. A bill to prevent and punish acts of terrorism, and for other purposes; read the first time.

By Mr. HARKIN (for himself and Mr. BOND):

S. 736. A bill to amend title IV of the Social Security Act by reforming the aid to families with dependent children program, and for other purposes; to the Committee on Finance.

By Mr. MURKOWSKI:

S. 737. An original bill to extend the deadlines applicable to certain hydroelectric projects, and for other purposes; from the Committee on Energy and Natural Resources; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 112. A resolution commending the Senate Enrolling Clerk upon his retirement; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself and Mr. NUNN) (be request):

S. 727. A bill to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes; to the Committee on Armed Services.

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. THURMOND. Mr. President, by request, for myself and the senior Senator from Georgia [Mr. NUNN], I introduce, for appropriate reference, a bill to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strength for fiscal year 1996, and for other purposes.

I ask unanimous consent that a letter of transmittal requesting consideration of the legislation and a section-by-section analysis explaining its purpose be printed in the RECORD.

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

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, April 20, 1995.

Hon. ALBERT GORE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: The Department of Defense proposes the enclosed draft of legislation, ''To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes.''

This legislative proposal is part of the Department of Defense legislative program for the 104th Congress and is needed to carry out

the President's budget plans for fiscal year 1996. The Office of Management and Budget advises that there is no objection to the presentation of this proposal to the Congress and that its enactment would be in accord with the program of the President.

This bill provides management authority for the Department of Defense in fiscal year 1996 and makes several changes to the authorities under which we operate. These changes are designed to permit a more efficient operation of the Department of Defense.

Enactment of this legislation is of great importance to the Department of Defense and the Department urges its speedy and favorable consideration.

Sincerely,

JUDITH A. MILLER.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

SECTION-BY-SECTION ANALYSIS

Title I—Procurement

Authorization of Appropriations

Section 101. Army

Section 102. Navy and Marine Corps

Section 103. Air Force

Section 104. Defense-wide activities

Section 105. Defense Inspector General

Section 106. Chemical demilitarization program

Section 107. Defense health program

Sections 101 through 107 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President's budget for fiscal years 1996 and 1997.

Section 108. Repeal of requirement for separate budget request for procurement of reserve equipment

Section 108 repeals the provisions of section 114(e) of title 10, United States Code, requiring a separate budget request for the procurement of Reserve equipment.

Title II—Research, Development, Test, and Evaluation

Section 201. Authorization of appropriations

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments and Defense Agencies in amounts equal to the budget authority included in the President's budget for fiscal years 1996 and 1997.

Title III—Operation and Maintenance

Subtitle A—Authorization of Appropriations

Section 301. Operation and maintenance funding

Section 301 provides for authorization of the operation and maintenance appropriations of the Military Departments and Defense-wide appropriations in amounts equal to the budget authority included in the President's budget for fiscal years 1996 and 1997.

Section 302. Working capital funds

Section 302 authorizes appropriations for the Defense Business Operations Fund and the National Defense Salified Fund in amounts equal to the budget authority included in the President's budget for fiscal years 1996 and 1997.

Section 303. Civilian Marksmanship Program fund

Section 303 amends the provisions of section 4308 and 4313 of title 10, United States Code, relating to the Civilian Marksmanship Program, to reflect the President's Budget proposal that the Program be funded exclusively from reimbursements received in the execution of the program.

Section 304. Repeal of limitations on activities of Defense Business Operations Fund

Section 304 amends section 316(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 to repeal limitations on the activities of the Defense Business Operations Fund

Section 305. Amendments relating to the Ready Reserve Force Component of the Ready Reserve Fleet

Section 305 amends the provisions of section 2218 of title 10, United States Code, relating to the National Defense Sealift Fund, to reflect the funding for the Ready Reserve Component of the Fleet by the Department of Defense as requested in the President's budget.

Subtitle B—Reserve Component

Section 321. Reimbursement of pay and allowances and accountability of Reservists supporting cooperative threat reduction with States of the Former Soviet Union.

This section amends section 1206 of the National Defense Authorization Act for Fiscal Year 1995, which authorizes funds for the execution of the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160) by adding two new subsections.

New subsection (c) would permit funds appropriated to execute programs authorized by the Cooperative Threat Reduction Act to be utilized to reimburse the military personnel appropriations accounts for the pay and allowances paid to reserve component personnel for service while engaged in any program authorized by this Act. The utilization of Reserve component personnel, particularly in expansion of military-to-military and defense contacts, is particularly advantageous.

Permitting these funds to be used to reimburse the active military appropriations accounts removes a significant resource impediment to increasing the opportunities for ordering individual reserves to active duty with their consent as specified in section 513 of the National Defense Authorization Act for Fiscal Year 1995. A similar provision was passed by the 103rd Congress in section 1316 (a) of the National Defense Authorization Act for Fiscal Year 1995 for Military-to-Military Contracts and Comparable Activities.

New subsection (d) would exempt members of a reserve component participating in activities or programs specified in the Cooperative Threat Reduction Act of 1993 who served over 180 days from counting against the authorized end strength for members of the armed forces on active duty under section 115(a)(1) of title 10 and against the senior grade strength limitations of sections 517 and 523 of title 10. Approval of this exemption from end strength and senior grade strength limitations removes an impediment to increasing the opportunities for ordering individual reserves to active duty with their consent as specified in section 513 of the National Defense Authorization Act for Fiscal Year 1995. A similar provision was passed by the 103rd Congress in section 1316 (c) of the National Defense Authorization Act for Fiscal Year 1995 for Military-to-Military Contacts and Comparable Activities.

There are no additional costs associated with enacting this legislation.

Section 322. Authority for Department of Defense funding for National Guard participation in joint exercises with the Army and Air Force for disaster and emergency assistance

This section would authorize the Secretary of the Army and the Secretary of the Air Force to provide for personnel of the National Guard, using funds appropriated for National Guard training exercises, to participate in joint exercises with the Army and Air Force to train for disaster and emergency response, and would thus allow these personnel to participate in such exercises in a Federally paid (title 32) status under state authority.

Under current law, Department of Defense funding for the National Guard may not be used for training the National Guard for disaster and emergency response. Funding for this training is the responsibility of the states and FEMA, and such training must be done in a state active duty status. This provision would authorize a limited exception to this allocation of responsibility by permitting use of Department of Defense funds and title 32 status for the Guard when engaged in joint exercises with the Army or Air Force for disaster and emergency response training. Disaster and emergency response training and exercises of the National Guard when not conducted in conjunction with the Army or the Air Force would continue to be a state and FEMA responsibility.

This amendment will ensure that National Guard personnel participating in joint exercises with members of the other components of their armed forces are eligible for the same protections and benefits as their counterparts from the Army Reserve, Air Force Reserve, and Regular components with whom they are participating. It will also avoid situations where lack of state or FEMA funds preclude participation by Guard units in joint exercises and thereby undermine the efficacy of those exercises.

Subtitle C—Other Matters

Section 331. Aviation and vessel war risk insurance

The purpose of this legislation is to provide a means for rapid payment of claims and the rapid reimbursement of the insurance funds to protect commercial carriers assisting the Executive Branch from catastrophic losses associated with the destruction or damage to aircraft or ships while supporting the national interests of the United States. Allowing the Department of Defense to transfer any and all available funds will allow the United States, in these two vital reinsurance programs, to match standard commercial insurance practice for the timely payment required by financial arrangements common in the transportation industry today. Reporting and the requirements for supplemental appropriations, if any, ensures Congressional oversight at all stages.

Subsections (a) and (b) of the proposed legislation set forth the short title and the findings and purposes, respectively.

Subsection (c) of the proposed legislation amends section 44305 of title 49, United States Code, by adding a new subsection (c).

Subsection (c)(1) allows transfer of any funds available to the Department of Defense, regardless of the purpose of those funds. Although other authorities may exist to transfer funds, limitations as to amounts and priorities make these authorities insufficient to rapidly respond to the obligations of the Department of Defense under the current law, especially if contingencies or war-time conditions exist. Proposed language would not distinguish between types of insurance or risk, so long as the Federal Aviation Administration had issued a policy covering the risk. The language would not limit the authority to a specific fiscal year, but would be ongoing without need for reenactment periodically by Congress. Such Congressional oversight is already in place through the reauthorization of the Aviation Insurance Program, next scheduled to take place in 1997.

Subsection (c)(2) provides specific time limits with which the Secretary of Defense must pay claims and reimburse the Federal Aviation Administration. Notification to Congress and the 30 day delay before transfer

required in other statutes is waived. The most important issue for the air carriers is the replacement of the hull so that they may continue operations, including supporting the requesting agency, without idling crews or having to lay off personnel due to the lack of airframes. A longer time frame is provided for other claims, such as liability to third parties, as normal claims procedures can adequately protect their interests.

Subsection (c)(3) requires reports to Congress within 30 days of loss for amounts in excess of one million dollars, with periodic updates to ensure Congress is aware of amounts being transferred and paid out under the chapter 443 program. As supplemental appropriations may be necessary, Congress will have sufficient information on which to base a decision regarding the supplemental appropriations.

Subsection (d) of the proposed legislation amends section 1205 of the Merchant Marine Act, 1936, (46 App. U.S.C. §1285) by adding a new subsection 9c).

Subsection (c)(1) authorizes the Secretary of Defense to transfer funds available to the Department to pay claims by contractors, for the damage or loss of vessels and death or injury to personnel, insured pursuant to Title XII of the Merchant Marine Act, 1936, or loss or damage associated therewith. Proposed language would not distinguish between types of insurance or risk, so long as the Maritime Administration had issued a policy covering the risk. The language would not limit the authority to a specific fiscal year, but would be ongoing without need for reenactment periodically by Congress. Such Congressional oversight is already in place through the reauthorization of the Vessel War Risk Insurance Program, next scheduled to take place before the 30 June 1995 expiration (46 App. U.S.C. §1294).

Subsection (c)(2) provides specific time limits within which the Secretary of Defense must reimburse the Secretary of Transportation.

Subsection (c)(3) requires reports to Congress on a periodic basis for claims paid in amounts in excess of one million dollars to ensure Congress is aware of amounts being transferred and paid out under the Title XII program. As supplemental appropriations may be necessary, Congress will have sufficient information on which to base a decision regarding the supplemental appropriations.

The addition of subsection (c) to section 44305 of title 49, United States Code, and subsection (c) to section 1205 of the Merchant Marine Act, 1936, (46 App. U.S.C. §1285) would allow the Department of Defense to rapidly pay claims resulting from damages or injuries caused by risks covered by the respective programs as a consequence of providing transportation to the United States when commercial insurance companies refuse to cover such risks on reasonable terms and conditions. The requirement to reimburse the Federal Aviation Administration or the Maritime Administration already exists; however, the only method for payment currently available may involve requesting supplemental appropriations from Congress. Such a process historically has taken six months or longer. Many air carriers have indicated their financial obligations may not allow them to continue to support the United States if rapid payment for losses cannot be made. Commercial aircraft insurance policies and practice require payment in less than 30 days when cause is not an issue, usually within 72 hours.

If enacted, this legislation would not result in an increase in the budgetary requirements of the Department of Defense.

Section 332. Testing of theater missile defense interceptors

The purpose of this legislation is to eliminate the requirement to attempt complex, multi-shot-engagement scenarios with relatively immature Engineering Manufacturing Development hardware when these same scenarios must be performed with production-representative hardware during the Initial Operational Test and Evaluation (IOT&E) phase.

The requirement to demonstrate interceptor performance under operationally realistic conditions with production-representative hardware already exists. The premature duplication of this testing will only add greater technical complexity, cost, and risk to the program and provide little if any technical value.

Theater Missile Defense (TMD) interceptor performance will be performed during the Initial Operational Test and Evaluation (IOT&E) phase and results reported to Congress prior to the system being allowed to enter production. The Director of Operational Test and Evaluation, Office of the Secretary of Defense, will prepare and submit a Beyond Low-Rate Initial Production Report. This report will confirm that adequate testing, including multi-shot scenarios, has been completed. This testing must be conducted in operational environments and scenarios, consistent with conditions that the interceptor will be expected to operate in when fielded.

Section 333. Authority to assign overseas school personnel to domestic schools and vice versa

This section would authorize the Secretary of Defense to assign personnel of either the school system established under section 2164 of title 10 or the school system established by the Defense Dependents' Education Act of 1968 (title XIV of the Education Amendments of 1978; 20 U.S.C. 921 *et seq.*) to provide administrative, logistical, personnel, and other support services to the other system, either in addition to, or in place of, their normal duties. Such assignments may be for the period prescribed by the Secretary.

Section 334. Authorization for expenditure of O&M and procurement funds for the accelerated architecture acquisition initiative

This section amends title 10 by adding a new section 2395a the purpose of which is to allow the Central Imagery Office (CIO), as a Combat Support Agency, to expend currently-programmed O&M and Procurement funds to establish, implement, and deploy a worldwide imagery architecture. Having flexibility to use these funds will provide the Central Imagery Office the ability to meet changing imagery requirements, ensure readiness, and provide timely support to military operations.

In the past, numerous studies and evaluations have indicated that the United States imagery system was unable to provide required imagery support in a timely manner. The experience of Desert Shield/Desert Storm reinforced those evaluations. The Central Imagery Office was created and assigned responsibility for enhancing the ability of the military departments, Unified Commands, their components, Joint Task Forces, tactical units, and other activities to make use of all imagery assets in a timely manner. The Accelerated Architecture Acquisition Initiative is a key program through which the Central Imagery Office will develop and field systems to provide real-time access to and dissemination from existing and planned imagery collection systems (national and theater) to defend and national users worldwide, real-time access to distributed digital imagery and imagery-product archives, and enhancements to and increases in the capacity of existing Department of Defense data networks to accommodate increased requirements from the imagery assets.

Critical to the success of the Accelerated Architecture Acquisition Initiative is centralized management and oversight to balance requirements to ensure successful development, procurement, and development of necessary hardware, software, communications, and services. Central Imagery Office must ensure the standardization, compatibility, and interoperability of equipment and processes to provide a worldwide system for required, timely imagery support. A key element the Accelerated Architecture Acquisition Initiative is the near-term provision to JCS-selected users of that equipment necessary to receive and use digital imagery products.

The Central Imagery Office's proposal provides the express language needed in the 1996 Appropriations Act for authority to purchase and deploy hardware, software, and communications, using Central Imagery Office funds, for activities funded in the Department of Defense-funded portion of the NFIP. Without this special provision, 31 U.S.C. section 1301A would prevent the Central Imagery Office from using funds appropriated to it in the defense-wide appropriation in this manner. The Central Imagery Office will be unable to carry out its intended emission to deliver Accelerated Architecture Acquisition Initiative capabilities to the organizations that require them and to establish successfully the Accelerated Architecture Acquisition Initiative architecture worldwide. This legislation will allow for an efficient and highly flexible way for the Central Imagery Office to deploy needed capabilities during crisis and emergencies, to meet changing imagery requirements, ensure readiness, and provide timely support to military operations.

Enactment of this proposal will not increase the budgetary requirement of the Department of Defense.

Section 335. Establishment of a Department of Defense Laboratory Revitalization Demonstration Program

The authority would establish a test program to allow the heads of selected defense laboratories greater flexibility to undertake facilities modernization without the requirement to seek approval from higher levels. The purpose of the program is to reduce the amount of time required to upgrade research and development capabilities at Department of Defense laboratories. The provision would recognize that facilities construction in support of research and development is historically more expensive than similar-sized projects in other construction categories. For test program laboratories, the provision would raise the threshold from $1.5 million to $3.0 million for minor military construction projects that the Secretary of Defense may carry out without specific authorization in law. The provision would also raise the threshold for minor military construction projects requiring prior Secretary of Defense approval from $500,000 to $1.5 million. Finally, the provision would raise for selected laboratories the threshold from $300,000 to $1.0 million for the value of any unspecified military construction project for which operation and maintenance funds may be used.

The test authority would expire on September 30, 2000. It would also require the Secretary of Defense to designate participating laboratories before the test may begin and to report to Congress on the lessons learned from the test program one year before it is terminated.

Subsection (a). A healthy and responsive defense laboratory system is essential to the

national defense and security, and to foster the growth and development of new technologies having both military and civilian applications. A strong and flexible defense laboratory system, staffed by top quality scientists, technicians, and engineers, with state-of-the-art equipment and facilities is critical to meeting new and changing world threats, as well as maintaining America's technological military leadership.

The ability of defense laboratories to rapidly introduce technological innovation into military systems, and to respond to technological exigencies has been significantly degraded by requirements that the laboratories conduct their facilities modernization functions under a set of complex and time consuming procedures inappropriate to laboratory operations. The inability of our laboratories and centers to modernize antiquated facilities in a prompt fashion has resulted in an ineffective and inefficient use of tax dollars.

The Secretary of Defense has determined that many of the problems in the defense laboratory system stem from the application of procedures and processes to the laboratories that are inappropriate to the research and development community. The Secretary anticipates that the elimination of certain unnecessary and cumbersome restrictions would result in much more efficient and effective laboratories. The Secretary has already selected laboratories from each of the military departments to participate in a demonstration program to substantiate the hypothesis. Currently, internal procedures and regulations are being updated, streamlined, or abolished for the purpose of the demonstration program. This proposal is intended to make those legislative changes identified by the Secretary of Defense as necessary to partially implement the Demonstration Program.

In implementing any authorizations in this Act that are waivers or exceptions to existing law or laws, the Secretary will assure that the basic purposes and interests of the original laws will be carried out and protected in a manner most appropriate to the research and development community.

The Secretary will review and evaluate the findings of the demonstration program, and make appropriate recommendations as to the applicability of legislative changes to all Department of Defense laboratories.

Subsection (b). This section is aimed at improving the research and development facility based by enhancing the process for upgrading the facilities including built-in equipment necessary for performing state-of-the-art research and development.

The inherently complex nature of conducting modern research requires facilities, equipment and support infrastructure that are simply more expensive, on a unit basis, than other types of military support activity. For example, representative examples of minor facilities construction obtained from each of the three Services from their fiscal year 1993 minor military construction (MILCON) requests, show laboratory construction, expansion or reconfiguration costing, on a square foot basis, about three times what a similarly sized office building cost.

Aside from meeting and responding to military crises such as Desert Storm, the very nature of the experimental process requires a rapid response to a scientific discovery. Often significant new information can be acquired by building on an existing experiment if that ''add on'' experiment can be put in place in a coherent fashion. Time is of the essence if experimental opportunities are to be maximized and efficiently exploited.

Operating and maintaining a government owned research and development facility base is in the best interests of the nation for the following reasons;

The Department of Defense research and development operations perform research and development activities quickly in response to operational needs. Examples of government scientists involved in the Desert Storm operation attest to the efficacy of the Department of Defense laboratory programs. Having Federal employees dedicated to defense research and development assists in assuring accurate communications and continuity of research and development assistance.

The cadre of government scientists with contemporary facilities assures that government managers have knowledgeable unbiased advisors on research and development, i.e., the ''smart buyer'' model. To stay current, scientists must not only continue their academic education, but need to be actively involved in contemporary research and development.

There are certain types of research and development that the government needs to maintain, due to their sensitive nature. Specific examples include chemical and biological agents, and nuclear effects.

There are some types of research and development that are not accomplished in private institutions, but are necessary for military operations. Specific examples include fuzing, communications network defense, special sensors, special military related medical research, and night vision equipment.

There are certain types of generic research in exotic or speculative areas which may have significant future military impact. Our laboratories, at least on a limited and selective basis, must have the ability to promptly pursue such research as opportunity dictates.

Subsection (b)(1). Sections 2805 (a) and (b)(1) of title 10 were established under Public Law 97–214 and were effective October 1, 1982. This provision is available to the agency to perform minor construction which was not specified in the Military Construction requests. The dollar limitations contained in 2805 (a) and (b) of title 10 were last revised in 1991.

The construction of laboratory and supporting facilities in direct support of state-of-the-art research and development historically is more expensive than similar sized projects in other construction categories. Specifically, there are unique safety, security, and operational requirements which inherently increase the cost for laboratory facilities. Increasing the limit of unspecified minor military construction to $3,000,000 for facilities in support of research, development, test, and evaluation (RDT&E) would allow the head of the laboratory the same relative latitude as the commander of other military programs.

Subsection (b)(2). The provisions contained in section 2805(b)(2) were intended to insure proper Congressional control and oversight of the minor military construction flexibility granted to the Service Secretaries. While the provisions of this Bill would modify the dollar threshold level at which such notification to the Congress would be required for this demonstration program, an effective evaluation of this demonstration program does require an appropriate reporting function. Consequently the Department of Defense, through already existing internal mechanisms, intends to identify the scope, nature and dollar amount of the use of this authority. The Services will report to the Director of the Defense Research and Engineering at the end of each fiscal year on how this authority was utilized describing dollar amounts, sources of funds and projects undertaken. This data could be made available to the Congress as part of the evaluation of the program.

Subsection (b)(3). The current provision found at section 2805(c)(1) setting a limit of $300,000 operation and maintenance funds for minor modifications and construction is appropriate for typical government office buildings, such as establishing walls and electrical outlets for an office. However, this dollar amount has been unduly restrictive for accomplishing laboratory modifications. To establish a state-of-the-art research and development environment, there are often special needs such as special ''clean room'' requirements, and special plumbing or ventilation requirements for safety equipment that cannot be met for $300,000. Raising the amount to $1,000,000 would allow the type of minor work available to most Commands but precluded to most Heads of Laboratories.

Subsection (c). It is the intention of the legislation to conduct an experiment to determine the effectiveness and benefits of granting this authority. Consequently, some baseline participation must be established for comparative purposes to permit effective evaluation of the program.

Subsection (d). The Department intends to document the performance and results of this program in order to effectively recommend to the Congress whether and with what changes this initiative should be made permanent.

Subsection (e). This section is included to assure that the language of this Act does not limit any existing authority that may have been granted to one or more of the laboratories under this Program.

Subsection (f). This section provides the definitions common to this Act.

Subsection (g). This section is included to insure that appropriate recommendations are made to the Congress.

Section 336. Repeal of certain depot-level maintenance provisions

This section repeals sections 2466 and 2469 of chapter 146, title 10, United States Code. These sections impose limitations on the amount of depot-level maintenance of materiel that can be performed by non-federal government employees and place restrictions on changing the performance of maintenance workloads currently performed in depot level activities of the Department of Defense to other depots and to private industry.

Section 2466 provides that not more than 40 percent of the funds made available in a Fiscal Year to a military department or a Defense Agency, for depot-level maintenance and repair workload may be used to contract for performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Repeal of Section 2466 will provide the Department of Defense and the military departments the needed flexibility to accomplish more than 40 percent of their depot maintenance workload by non-Federal Government employees when needed to achieve the best balance between the public and private sectors of the Defense industrial base. The repeal of Section 2466 will not increase the budgetary requirements of the Department of Defense.

Section 2469 prohibits the Secretary of Defense or the Secretary of a Military Department from changing the performance of a depot-level maintenance workload that has a value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense unless, prior to any such change, the Secretary uses competitive procedures to make the change. The Department has suspended cost competitions for depot maintenance workloads because the data and cost accounting systems of the Department are not capable of determining actual costs for accomplishing specific depot

maintenance workloads in the depots. Repeal of Section 2469 will permit the Department of Defense and the military departments to shift workloads from one depot to another or to private industry as required to resize the depot maintenance infrastructure to support a smaller force structure. The repeal of section 2469 will not increase the budgetary requirements of the Department of Defense.

This legislation will enable the Department to structure its organic Defense depot maintenance activities consistent with satisfying core logistics capability requirements that are based on providing effective support for national defense contingency situations and other emergencies.

The proposed repeal of sections 2466 and 2469 will permit the Department of Defense to accomplish depot maintenance for weapon systems and equipment in the most cost effective and efficient manner. The Department is establishing core depot maintenance centers of excellence to retain the best quality products and services to support its combat forces. The Department's core depot maintenance concept promotes sharing of workload between Defense depots and private industry to accommodate teaming efforts and supports the best application of modern technology for accomplishing depot maintenance.

The repeal of sections 2466 and 2469 will allow the Department to shift workloads from current depots to other Defense depots and to compete workloads in the private sector to achieve the lowest costs and best efficiency in support of the core depot maintenance concept. It will also enable the Department to size its depot maintenance infrastructure to best support emergency and contingency scenarios with the required levels of weapon systems readiness.

The enactment of this proposal will not increase the budgetary requirements of the Department of Defense.

Title IV—Military Personnel Authorizations

Subtitle A—Active Forces

Section 401. End strengths for Active Forces

Section 401 prescribes the personnel strengths for the Active Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's budget for fiscal years 1996 and 1997.

Subtitle B—Reserve Forces

Section 411. End strengths for Selected Reserve

Section 411 prescribes the strengths for the selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's budget for fiscal years 1996 and 1997.

Section 412. End strengths for Reserves on active duty in support of the Reserves

Section 412 prescribes the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces.

Subtitle C—Military Training Student Loads

Section 421. Authorization of training student loads

Section 421 provides for the average military training student loads in the numbers provided for this purpose in the President's amended budget for fiscal years 1996 and 1997.

Title V—Military Personnel Policy

Subtitle A—Officer Personnel Policy

Section 501. Equalization of accrual of service credit for officers and enlisted members of the Armed Forces

Subsection (a) amends section 972 of title 10 by combining and redrafting paragraphs (3) and (4) and by replacing ''liable'' with ''required''. These changes are intended to clarify the provision and do not make substantive change to the current law. Section 972 states that enlisted members must make up lost under certain circumstances before that time can be counted toward service for retirement.

Subsection (b) amends title 10 by adding a new section 972a. The purpose of this new section is to prevent accrual of service credit to an officer of the armed forces under the following circumstances: (1) while in a deserter status; (2) while absent from duty, station, or organization for more than one day without proper authority; (3) while confined by military or civilian authorities for more than one day before, during or after trial; or (4) while unable for more than one day to perform duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from an officer's misconduct. These circumstances are the same as those under which an enlisted member is required to make up time lost under section 972 of title 10. Such time would not count in computing the officer's length of service for any purpose except the computation of basic pay under section 205 of title 37, including, but not limited to, voluntary retirement for length of service under chapters 367, 571, or 867 of title 10.

Sections 3925 and 8925 of title 10 address computation of years of service for voluntary retirement by regular enlisted members of the Army and the Air Force, subject to the provisions of section 972. As noted above, section 972 states that enlisted members must make up time lost under certain circumstances before that time can be counted toward service for retirement. This made-up time ensures that the Army and the Air Force receive a full commitment based on an enlistment or induction contract. Comparable provisions relating to the Navy in chapter 571 of title 10, do not reference section 972 and do not have a provision comparable to sections 3925 and 8925.

Sections 3929 and 8926 of title 10 address computation of years of service for voluntary retirement by regular and reserve commissioned officers of the Army and the Air Force. Comparable provisions relating to the Navy in chapter 571 of title 10, do not have a provision comparable to sections 3929 and 8926. Presently, there are no limitations placed on officers for actions similar to those in section 972. Officers continue to receive service credit towards retirement eligibility, higher longevity pay, and increased multiplier for retired pay purposes. At the same time, highly-qualified officers selected for early retirement cannot be extended past their mandatory retirement date to reach a pay increase point. This proposal will rectify these inequities.

Subsections (c) and (e) amend sections 3926 and 8926 of title 10 to make reference to new section 972a in the same fashion that section 972 is referenced in sections 3925 and 8925 of title 10. Subsection (d) amends title 10 by adding a new section 6328 in chapter 571 to make reference to both sections 972 and 972a.

The enactment of this proposal will not increase the budgetary requirements of the Department of Defense.

Section 502. Changes in general officer billet titles resulting from the reorganization of headquarters, Marine Corps

The purpose of this legislation is to replace the current Sections 5041(b), 5044 and 5045 of Chapter 506 of title 10, United States Code, with language to reflect reorganization of Headquarters Marine Corps to more efficiently support the Commandant in his two roles as a member of the Joint Chiefs of Staff and as a Service Chief.

Based on a Headquarters Marine Corps Reorganization Study, proposed changes were recommended to establish a viable organization that incorporates coherent, timely and forceful resource management and advocacy; General Officer efficiencies; and the ability to respond rapidly to emerging issues in a coordinated and comprehensive method.

The following changes in general officer billet titles were proposed to more efficiently accomplish support to the Commandant:

The Assistant Commandant of the Marine Corps to Vice Commandant of the Marine Corps;

Deputy Chiefs of Staff of the Marine Corps to Deputy Commandants of the Marine Corps;

Assistant Deputy Chiefs of Staff of the Marine Corps to Assistant Deputy Commandants of the Marine Corps;

Assistant Chiefs of Staff of the Marine Corps to Assistant Commandants of the Marine Corps.

This proposal will be effected at no cost to the Department of Defense or the Department of the Navy

Section 503. Increase in the transition period for officers selected for early retirement

Paragraphs (1) of subsections (a) and (b) would amend sections 581 and 638 of title 10, United States Code, to extend the transition period for officers selected for early retirement by three months. Under subsections 581(b) and 638(b)(1)(A) of title 10, an officer must be retired ''not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.'' Subsections (a) and (b) of this proposal would require officers selected for early retirement to be retired not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

Paragraphs (2) of subsections (a) and (b) would authorize the Secretary concerned to defer the retirement of an officer otherwise approved for early retirement under section 581, 638 or 638a of title 10 for not more than 90 days, in order to prevent a personal hardship for the officer or for other humanitarian reasons.

Subsection (c) would exclude from counting for the purpose of determining authorized end strength under section 115 of title 10, those officers selected for early retirement whose mandatory retirement date has been deferred, for up to 90 days, by the Service Secretary for reason of personal hardship or other humanitarian reasons.

Under current law, officers selected for early retirement have six months and some fraction of a seventh month to prepare for an involuntary transition to civilian life. In most cases, these officers have career expectations which are limited only by statutory restrictions on years of commissioned service and, therefore, are not prepared to make this sudden, unwanted transition. Many of the officers selected for early retirement must seek and attain post-military service employment, move families to retirement locations, meet current financial obligations such as mortgage payments and college tuition costs for older children and work around secondary and elementary education school schedules for younger children.

Compressing these major events into a six month period is difficult, particularly if the officer is deployed or stationed overseas. Extending the transition period by three months would not only permit officers selected for early retirement to plan a more

orderly transition to civilian life while still performing in their military positions, but would also provide the Services more time in which to identify and detail reliefs for these officers while still meeting fiscal year officer end strength requirements.

This proposal to increase the transition period for officers selected for early retirement by three months is a modest, but necessary change which will positively affect one of the military's most negative personnel reduction processes. While this change will not eliminate an officer's shock of being forcibly retired early from a Service, it will soften the impact for affected officers and their families who have dedicated 20 or more years of faithful and professional military service to the United States.

There is no cost associated with this proposal. Selective Early Retirement Boards could be convened three months earlier to offset any net increase in total pay and allowances expended as a result of the three month extension in the transition period.

Section 504. Revision in the authorized strength limitations for Air Force commissioned officers on active duty in the grade of major

This section would authorize the Secretary of the Air Force to raise temporarily the ceiling on the number of majors on active duty in the Air Force by 1,100. Such statutory authority would allow the Air Force to accelerate promotion timing to meet congressional intent as expressed through the Defense Officer Personnel Management Act. This proposal will not increase the total number of commissioned officers authorized by the Air Force and will not impede planned reductions in the officer force.

Section 505. Revision in the authorized strength limitations for Navy commissioned officers on active duty in grades of lieutenant commander, commander, and captain

This section temporarily and uniformly raises the ceilings on the numbers of lieutenant commanders, commanders and captains on active duty in Navy by 910, 722 and 300, respectively. This temporary increase in ceilings is necessary to provide sufficient grade authorizations to maintain Unrestricted and Nurse promotion flow and opportunity within Defense Officer Personnel Management Act (DOPMA) guidelines. This temporary authority would expire on the 30th of September, 1997, by which time Navy post-draw down officer requirements and end strength will have stabilized, and a more precise determination of permanent grade table relief requirements can be made. For the long term, Navy requires permanent grade table relief to maintain officer career progression within Defense Officer Personnel Management Act guidelines. Navy will pursue this permanent relief as part of a joint Service effort coordinated by the Department of Defense.

Navy's Unrestricted Line O–4 flow point will exceed the Defense Officer Personnel Management Act guideline of 11 years in fiscal year 1999, and peak at 13 years and 6 months in fiscal year 2003, despite the use of forced attrition programs to control this increase. As the significant career milestone of promotion to O–4 slips further off into the future, Navy will find it increasingly more difficult to attract high-caliber officers and retain its best junior officers, particularly in the current climate of declining strength, increased forced attrition and reduced retirement benefits.

To provide Nurse Corps officers with comparable promotion opportunity and, Navy has had to provide substantial internal compensation to the Nurse Corps. Without this ''compensation'' Nurse Corps promotion opportunity and timing would remain outside of the Defense Officer Personnel Management Act promotion system guidelines indefinitely at the grades of commander and captain. In the current environment of declining strength this compensation is becoming increasingly more difficult to provide.

The proposed temporary change to the grade table will provide sufficient grade relief to maintain Unrestricted Line and Nurse Corps promotion opportunity and timing within Defense Officer Personnel Management Act guidelines and ensure Navy's ability to attract and retain the high-caliber officers it requires.

The approximate cost to implement this initiative is estimated as follows (in millions): Fiscal Year 1996: 00.00; Fiscal Year 1997: 10.00.

These amounts have not been included in any estimates for appropriations submitted through budget channels by the Department of Defense.

Section 506. Authorization of general or flag officer promotion zones

This section amends section 645 of title 10 to clarify the definitions of promotion zones which are applicable to Chapter 36 of title 10. The modified definitions will not require executive level officers (grades 0–6 and above) to be placed in a promotion eligibility category (above the zone) for officers who have failed of selection for promotion. Executive level officers become eligible to be selected for promotion when they have one year service in grade, and remain eligible unless selected for promotion or retired.

In part, the Defense Officer Personnel Management Act (DOPMA) was enacted to make uniform the provisions of law relating to promotion of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps. The Defense Officer Personnel Management Act was, however, enacted primarily for the purpose of field grade officer management.

At the time of the Defense Officer Personnel Management Act's enactment, it was apparent that executive level officers were not intended to be subject to all of the provisions of the Defense Officer Personnel Management Act. The House of Representatives Report of the Committee on Armed Services which accompanied Senate bill 1918 states ''this category of executives is in many ways unique and can and should be managed accordingly. The small numbers involved permit this, and the importance of the resource demands this.'' The House report further states that ''the concept of failing selection for promotion does not apply when officers are not selected for promotion to the flag and general officer grades.''

Given that executive level officers do not fail selection for promotion and, therefore, should not be placed in an ''above the promotion zone'' category, it is proposed that the definition of ''promotion zone'' be modified to include executive level officers considered previously for promotion. The proposed amendment would, therefore, clarify that such officers are not above the zone, and thereby eliminate any stigma of failing of selection, bringing the statute squarely within the apparent intent of Congress. There are no other provisions of the Defense Officer Personnel Management Act which are affected by the proposed modifications.

There are no costs associated with this legislation.

Subtitle B—Reserve Component Matters

Section 511. Repeal of requirement for physical examination on calling militia into Federal service

This section repeals section 12408 of title 10, United States Code, which requires that each member of the National Guard receive a physical examination when called into, and again when mustered out of, Federal service as militia. For short periods of such service, this requires two complete physical examinations during a period of days or weeks. In view of other statutory and regulatory requirements for periodic medical examinations and physical condition certifications for members of the National Guard, this additional examination requirement is unnecessary, administratively burdensome, and expensive, and could impede the rapid and efficient mobilization of the National Guard for civil emergencies.

There is no corresponding statutory requirement for physical examinations when members of the National Guard or other reserve components are ordered to active duty as reserves.

Section 512. Military leave for public safety duty performed by members of the Reserve components of the Armed Forces

This section amends section 6323(b) of title 5 by permitting employees to elect, when performing duties described in that section, either military leave under that subsection or annual leave or compensatory time to which they are otherwise entitled. This amendment would not permit use of sick leave for the performance of military duty described in section 6323(b).

Section 513. Change to Reserve Officers' Training Corps advanced course admission requirements

This section amends section 2104(b)(6)(A)(ii) of title 10 to permit the Secretary of the military department to prescribe the length of the field training or practice cruise that persons who have not participated in the first two years of Reserve Officers' Training Corps must complete to be enrolled in the Reserve Officers' Training Corps Advanced Course. Currently, the preliminary training must last at least six weeks.

This proposal authorizes the Secretary concerned to prescribe the length of the field training or practice cruise required for admission to the Reserve Officers' Training Corps Advanced Course.

Section 514. Clarifying use of military morale, welfare, and recreation facilities by Retired Reservists

This section amends section 1065(a) of title 10, United States Code, to give members of the Retired Reserve who would be eligible for retired pay but for the fact that they are under 60 years of age (gray area reservists) the same priority for use of morale, welfare, and recreation (MWR) facilities of the military services as members who retired after active-duty careers.

Currently, section 1065(a), enacted in 1990, gives the retired reservists the same priority as active-duty members. They, therefore, have preference over retirees from active duty. This section amends the current section 1065(a) by revising the last sentence to correct this inequity.

Enactment of this section will not result in an increase in the budgetary requirements of the Department of Defense.

Section 515. Objective to increase percentage of prior active duty personnel in the Selected Reserve

Section 1111(a) of the National Defense Authorization Act for Fiscal Year 1993 provides that the Secretary of the Army shall have an objective of increasing the percentage of prior active duty personnel in the Army National Guard to 65 percent in the case of officers and 50 percent in the case of enlisted members. This change would amend section 1111 and eliminate from the law what may be seen as essentially an arbitrary percentage as a target. It will also facilitate increasing

the active duty percentage of the career officer and enlisted leadership under Department objectives established by the Army's Section 1111 Congressional Plan submitted to Congress in January, 1994. The plan, developed after months of extensive modeling and analysis by the Deputy Chief of Staff for Personnel, supports objectives of 65 percent for warrant officers and commissioned officers in the grades above first lieutenant and below brigadier general. It also limited the grades for enlisted members to sergeants and above and increased the objective from 50 to 60 percent.

Section 516. Wear of military uniform by National Guard technicians

This section would amend section 709 of title 32, United States Code to provide that National Guard technicians who are required as a condition of such civilian employment to be members of the National Guard are also required to wear military uniforms in the course of performing their duties as technicians. These technicians are currently required to wear uniforms in their civilian jobs, and this requirement has been upheld by the Federal Labor Relations Authority and the courts. Recent decisions by the Federal Labor Relations Authority and the FSIP have required state National Guard organizations to negotiate with employee unions on the civilian clothing allowance under 5 U.S.C. 5901. These decisions may result in state Guard organizations being required to provide monetary civilian clothing allowances to compensate technicians that have already been furnished the required military uniforms under the military wear and tear replacement provisions of 37 U.S.C. 418.

Subsection (b) would allow a period of service as a technician by a person who is an officer in the National Guard to be considered active duty for the purposes of uniform allowances for officers under title 37. This would place technician officers on the same footing as AGRs as to eligibility for uniform allowances. This subsection would also provide that these allowances are exclusive of civilian uniform allowances authorized under titles 5 and 10.

Subsection (c) would authorize more frequent issuance of military uniforms to members of the National Guard who are technicians, as a result of wear and tear from wear during the course of their civilian employment. It would also provide that the issuance of uniforms or provision of a uniform allowance to these technicians under 37 U.S.C. 418 would be exclusive of authority to provide civilian uniforms or allowances under 5 U.S.C. 5901 or 10 U.S.C. 1593.

Section 517. Active duty retirement sanctuary for reservists

This section amends sections 1163(d) of title 10 to provide for an exception to the active duty retirement sanctuary provision for a member of a reserve component, who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system. This proposal would provide authority for the Secretaries of the military departments to issue regulations requiring that the length of active duty be at least 180 days before members of a reserve component could request retention on active duty until they become eligible for active duty retired pay. Such regulations would require reservists with 18 or more years of qualifying service for active duty retired pay to serve on active duty for special work for a period of 180 consecutive days or longer in order to request active duty retirement sanctuary. Certain reservists involuntarily recalled to active duty would be exempt from the 180-day requirement. There are no costs associated with the provision.

Section 518. Involuntarily separated military reserve technicians

This section amends section 3329 of title 5 which requires that certain eligible Department of Defense military reserve technicians who were involuntarily separated from their positions are given competitive service job offers in the Department of Defense within 6 months of application. Eligibility consisted of those who:

Separated on or after October 23, 1992, with 15 years technician and 20 years of service creditable for non-regular retirement under title 10, United States Code, section 1332;

Lost military membership not due to misconduct or delinquency;

Are not eligible for immediate or early retirement; and

Apply within one year of separation.

This would eliminate the requirement that separated technicians receive a job offer giving them placement rights above other separated Department of Defense civilian employees (including veterans). It also eliminates the requirement that a vacancy be artificially created. The proposed amendment would accord eligible technicians the same priority placement consideration as other displaced Department of Defense employees.

Subtitle C—Amendments to the Uniform Code of Military Justice

The legislative proposals in this subtitle are the result of an annual review of the Uniform Code of Military Justice by the Joint Service Committee on Military Justice. The Joint Service Committee on Military Justice was established in response to Executive Order 12473, as amended by Executive Orders 12484, 12550, and 12708, and consists of representatives from each of the five services and from The United States Court of Appeals for the Armed Forces. The purpose of the Joint Service Committee is to assist the President in his responsibilities under article 36 of the Uniform Code of Military Justice (10 U.S.C. 836) to ensure that the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States District Courts are applied, so far as practicable, to cases triable by court-martial. The enactment of this proposed legislation would result in no additional cost to the Government.

Section 551. Definitions

This section amends article 1 of the Uniform Code of Military Justice (10 U.S.C. 801) by providing definitions of the terms ''classified information'' and ''national security''. These definitions are identical to those used in the Classified Information Procedures Act (18 App. U.S.C. 1). The section also provides a definition of the term ''armed conflict''. This definition is similar to the definition of ''contingency operation'' found in section 101(a)(13) of title 10, United States Code.

Section 552. Jurisdiction over civilians accompanying the forces in the field of time of armed conflict

This section amends article 2(a)(10) of the Uniform Code of Military Justice (10 U.S.C. 802(a)(10)) by extending jurisdiction over civilians accompanying the forces in the field to situations of armed conflict. This amendment recognizes that armed conflict may exist without a declaration of war and overturns *United States v. Averette*, 41 C.M.R. 363 (C.M.A. 1970). Determining whether an armed conflict exists in the absence of a formal declaration of war is a factual determination based on the totality of the circumstances, including: the nature of the conflict (whether it involves armed hostilities against an organized enemy); the movement to and the numbers of United States forces in the combat area; the casualties involved and the sacrifices required; the maintenance of large numbers of active duty personnel; legislation by Congress recognizing or providing for the hostilities; executive orders and proclamations concerning the hostilities; and expenditures in the war effort.

Section 553. Investigations

This section amends article 32 of the Uniform Code of Military Justice (10 U.S.C. 832) by adding a new subsection which authorizes an article 32 investigating officer to investigate uncharged offenses when, during the course of a hearing under this article, the evidence indicates that the accused may have committed such offenses. An article 32 proceeding frequently eliminates weak or baseless charges saving the government the time and expense of having to address them at trial. It also serves the defense as a valuable discovery tool permitting it to cross-examine government witnesses under oath before trial. The investigation's swift completion saves the accused from the anxiety and uncertainty of what charges, if any, he will have to defend against and assures his right to a speedy resolution of the issues. Authorizing an investigating officer to broaden the scope of the investigation beyond those offenses charged benefits both the government and the accused. Under current procedure, the investigating officer would at a minimum, have to delay the proceeding in order to allow the Government time to prepare and serve additional charges should a basis for such charges arise during the investigation. Such delays are contrary to the interests of both the accused and the government in ensuring the swift and efficient administration of justice.

The proposed legislation should allow the investigating officer to investigate the uncharged allegation of allegations without having to delay the proceeding, but still insure that the accused's due process rights were protected. The investigating officer would be required to advise the accused of the nature of the uncharged offense or offenses and that the offense or offenses will be investigated during the current investigation. The accused would retain the same rights with regard to the uncharged offenses as existed with regard to the charged offenses, i.e., the right to be present and represented by counsel, to confront and cross-examine available witnesses, to examine real and documentary evidence, to examine statements of unavailable witnesses, to request that the investigating officer call witnesses, and to present evidence in defense or remain silent. After hearing all the evidence, the investigating officer may then recommend the preferral and referral of additional charges in the formal report on finding that a sufficient factual basis for doing so exists.

Section 554. Refusal to testify before court-martial

This section amends article 47(b) of the Uniform Code of Military Justice (10 U.S.C. 847(b)) by removing the limitations on punishment which may be imposed by a Federal District Court for a civilian witness's refusal, after being subpoenaed, to appear or testify before a court-martial. Under the present statute, the Federal District Court may only impose ''a fine of not more than $500.00, or imprisonment for not more than six months, or both'' on a recalcitrant witness. This proposal leaves the amount of confinement or fine to the discretion of the Federal Court having jurisdiction over the case and is based on 18 U.S.C. 401–402. This approach provides the court greater flexibility in determining a punishment more appropriately designed to elicit cooperation from a recalcitrant witness.

Section 555. Records of trial

This section amends article 54(c)(1)(A) of the Uniform Code of Military Justice (10 U.S.C. 854(c)(1)(A)) by changing the triggering factors which require a verbatim record of trial in general courts-martial. It eliminates verbatim records of trial in general courts-martial where the adjudged sentence does not require mandatory review by a Court of Criminal Appeals under article 66(b)(1) of the Uniform Code of Military Justice, i.e., a sentence which does not extend to death, dismissal, discharge, or confinement for one year or more. As a result, staff judge advocates would have the option of preparing the records for such cases in either summarized or verbatim format, as their available resources dictate. Courts-martial affected by this legislation are examined under article 69(a) of the Uniform Code of Military Justice (10 U.S.C. 869(a)) in the Service office of The Judge Advocate General and can be fairly and efficiently examined through use of a summarized record of trial, as is currently the case with records of special courts-marital in which no punitive discharge is adjudged.

Section 556. Effective date of punishments

This section amends article 57(a) of the Uniform Code of Military Justice (10 U.S.C. 857(a)) by making forfeitures of pay and allowances and reductions in grade effective immediately upon being adjudged by a court-martial. It discontinues the current practice of allowing a convicted member to retain the privileges of his rank until the record of trial has been prepared, the accused presents matters for the convening authority's consideration (up to ten days from service of the record upon the accused), and the convening authority reviews the record and takes action on the sentence. This situation can last from several weeks to months depending upon the length and complexity of the trial. The immediate application of forfeitures and reduction in grade would not only have the desired punitive and rehabilitative impact upon the accused, but would also impress upon other members the costs of misconduct, thus engendering an enhanced deterrence to future criminal behavior by military members.

Section 557. Deferment of confinement

This section adds a new article 57a of the Uniform Code of Military Justice (10 U.S.C. 857a) which combines the existing provision authorizing deferment of confinement, *i.e.*, article 57(d) of the Uniform Code of Military Justice, with two new provisions describing additional circumstances under which such action is authorized.

The first of the new provisions, article 57a(b), permits the Secretary concerned, or his designee, to defer the service of an accused's confinement when a Judge Advocate General orders a case reversed by a Court of Military Review to be sent to the United States Court of Military Appeals for further review under article 67(a)(2). The latter court has directed that, when the government appeals a court of military review's reversal of the findings or sentence to confinement, the accused must be released from confinement pending the government's appeal unless it can be shown that the accused is a flight risk or a potential threat to the community should release be granted. See *Moore v. Adkins,* 30 M.J. 249 (C.M.A. 1990). Since current law only allows deferment prior to ordering the execution of the sentence to confinement, this legislation is necessary for the purpose of establishing procedures to satisfy the mandate of the court.

The second of the new provisions, article 57a(c) allows the convening authority to defer the running of a sentence to confinement when a state or foreign country has temporarily released the accused from its custody to allow the military to try the accused before a court-martial and the military is then obligated by agreement such as the Interstate Agreement on Detainers Act, 18 App. U.S.C., or a treaty to return the accused to the sender state's custody after the court-martial is completed. Since article 57(b) provides that an accused's sentence to confinement begins to run upon the date it is adjudged, any sentence of confinement imposed by the court-martial would have to run concurrently with the accused's confinement by the sender state in the absence of this legislation. This would be the case regardless of the fact that the court-martial conviction was based on different crimes than those prosecuted by the sender state. The military courts have been determined to be federal courts for the purpose of complying with the Interstate Agreement on Detainers Act. See *United States* v. *Greer,* 21 M.J. 338 (C.M.A. 1986).

Section 558. Submission of matters to the convening authority for consideration

This section amends article 60(b)(1) of the Uniform Code of Military Justice (10 U.S.C. 860(b)(1)) by inserting the word ''written'' in the first sentence. The amendment requires matters submitted by an accused for consideration by a convening authority with respect to the findings and sentence of a court-martial to be limited to written matters.

Section 559. Proceedings in revision

This section amends article 60 of the Uniform Code of Military Justice (10 U.S.C. 860) by adding a new paragraph (3) to subsection (e). It provides that a proceeding in revision may be ordered, prior to authentication of the record of trial by the Military Judge, to correct an erroneously announced sentence. The sentence may be corrected even if, in doing so, the severity of the sentence is increased. The amendment applies only to correction of an erroneously announced sentence and does not authorize reconsideration. The amendment overrules *United States v. Baker,* 32 M.J. 290 (C.M.A. 1991). The previously designated subsection (e)(3) is redesignated as subsection (e)(4).

Section 560. Post-trial review of courts-martial

Subsection (a) of this section amends article 61(c) of the Uniform Code of Military Justice (10 U.S.C. 861(c)) by adding the phrase ''or an application for relief under section 869(b) of this title (article 69(b))''. Subsection (b) amends article 69(b) of the Uniform Code of Military Justice (10 U.S.C. 969(b)) by adding the phrase ''Unless the accused has waived or withdrawn the right to appellate review under section 861 of this title (article 61)''. These amendments address a statutory loophole which permits an accused to formally waive or withdraw appellate review under the provisions of article 66 or 69(a) and up to two years later submit an Application for Relief under the provisions of article 69(b). The proposed change limits an accused to a single avenue of post-trial review.

When an accused formally waives or withdraws appellate review, he or she knowingly waives the right to bring issues to the attention of a Court of Criminal Appeals or the Office of The Judge Advocate General. Most legal issues are best resolved through the normal appellate review process. Permitting an accused who has waived or withdrawn appellate review much later to submit an Application for Relief to The Judge Advocate General allows that accused to equivocate at the expense of judicial efficiency and economy and in effect to ''shop'' for the most effective forum.

Section 561. Appeal by the United States

This section amends article 62 of the Uniform Code of Military Justice (10 U.S.C. 862) by allowing the Government to file an interlocutory appeal of rulings or orders issued by the military judge which direct the government to disclose classified information, impose sanctions for nondisclosure of classified information, or refuse a protective order sought to prevent the disclosure of classified information. It makes applicable to courts-martial the same protections with regard to classified information as apply to orders or rulings issued on Federal District Courts under the Classified Information Procedures Act (18 App. U.S.C. 7).

Section 562. Flight from apprehension

This section amends article 95 of the Uniform Code of Military Justice (10 U.S.C. 895.) to proscribe fleeing from apprehension without regard to whether the accused otherwise resisted apprehension.

The proposed change responds to the United States Court of Military Appeals decisions in *United States* v. *Harris,* 29 M.J. 169 (C.M.A. 1989), and *United States* v. *Burgess,* 32 M.J. 446 (C.M.A. 1991). In both cases, the Court held that resisting apprehension does not include fleeing from apprehension, despite the explanation in Part IV, paragraph 19c(1), MCM, 1984, of the nature of the resistance required for resisting apprehension: ''The resistance must be active, such as assaulting the person attempting to apprehend or flight'' (emphasis added). The 1951 and 1969 Manuals for Courts-Martial also explained that flight could constitute resisting apprehension under article 95, an interpretation affirmed in the only early military case on point, *United States* v. *Mercer,*11 C.M.R. 812 (A.F.B.R. 1953).

Flight from apprehension should be expressly deterred and punished under military law. Contrary to civilian jurisdictions, military personnel are specially trained and routinely expected to submit to lawful authority. Rather than being a merely incidental or reflexive action, flight from apprehension in the context of the armed forces may have a distinct and cognizable impact on military discipline. The present alternatives for reaching and punishing flight from apprehension are unsatisfactory, in that they lack uniformity and are potentially unfair. Reliance on local regulations (*e.g.,* installation traffic regulations requiring drivers to stop for a police vehicle with its lights and siren on), or assimilation of state statutes makes prosecution dependent upon the vagaries of inconsistent and sometimes nonexistent law. Punishing a fleeing suspect for disobedience of a law enforcement officer's order is both problematic (it requires that the suspect receive an order, which is often not the case or is impossible to prove) and unfair to the accused (the maximum punishment for disobedience far exceeds the misdemeanor-type nature of fleeing apprehension). Finally, proceeding under article 134 as the Court suggested in *Harris,* typically would raise several difficult legal issues, including preemption and notice.

The Uniform Code of Military Justice must be amended in order to uniformly proscribe fleeing apprehension under military law; the *Harris* and *Burgess* decisions are premised upon statutory interpretation, not Manual provisions. The proposed Manual changes will be included in the Joint Service Committee's 1994 Annual Review after the legislation passes.

Section 563. Carnal knowledge

Subsection (a) of this section amends article 120(b) of the Uniform Code of Military Justice (10 U.S.C. 920(b)) by making the crime of carnal knowledge gender neutral,

bringing article 120 of the Uniform Code of Military Justice into conformity with the spirit of the Sexual Abuse Act of 1986 (16 U.S.C. 2241–2245).

Subsection (b) of this section amends article 120 of the Uniform Code of Military Justice (10 U.S.C. 920) by adding a new subsection (d) permitting an affirmative defense of mistake of fact for alleged carnal knowledge, regarding the age of the person with whom the accused committed the act of sexual intercourse. It allows the accused to defend against a charge of carnal knowledge on the basis that he or she lacked a criminal intent while protecting children under 12 years of age from sexual abuse and, thus causes the military offense of carnal knowledge to more closely conform to its federal civilian counterpart (18 U.S.C. 2243).

Section 564. Instruction in the Uniform Code of Military Justice

This section amends article 137(a)(1) of the Uniform Code of Military Justice (10 U.S.C. 937(a)(1)) by lengthening the period of time in which training in certain provisions of the Uniform Code of Military Justice is provided to new enlistees from six to fourteen days.

Subtitle D—Other Matters

Section 571. Indefinite reenlistments for career enlisted members

Currently, section 505(d) of title 10, United States Code, authorizes the Secretaries of the military departments to accept reenlistments in regular components for a period of at least two but not more than six years. Accordingly, even senior enlisted members of the armed forces who have made military service a career must periodically reenlist. This proposal would eliminate the administrative efforts and associated costs that occur as a consequence of the requirement to reenlist continually senior enlisted members.

Under this section, the Secretaries of the military departments could accept indefinite reenlistments from enlisted members who have at least ten years of service on active duty and who are serving in the pay grade of E–6 or above. The vast majority of enlisted members with these characteristics will make military service a career. Thus, an enlisted member who serves 30 years would avoid the necessity of continually reenlisting over a 20-year period. The paperwork for reenlistment and its processing is not burdensome, but it is not insignificant. Savings should result. The proposal would also increase the prestige of the noncommissioned officer corps.

Section 572. Chief Warrant Officer promotions

This section amends sections 574(e) and 575(b) of title 10 to reduce the minimum time in grade necessary for promotion to two years rather than three, and to authorize the below-zone selection for promotion to the grade of chief warrant officer, W–3.

Reduction of the minimum time in grade required for promotion would result in actual promotion after three years in grade. It is not now possible for below zone consideration, even to chief warrant officer, W–4. This legislation would also authorize chief warrant officer, W–3, below-zone selection opportunity. This change will permit recognition of the small number of chief warrant officers, W–3, deserving of promotion ahead of their peers. The average chief warrant officer, W–2, has almost eighteen years enlisted service when commissioned in that grade.

Prior to 1 February 1992 when the Warrant Officer Management Act became effective, temporary warrant officer promotions were made under such regulations as the service secretary prescribed, as authorized by section 602 of title 10. Under this section, repealed by the Warrant Officer Management Act, warrant officers were temporarily promoted well ahead of the criteria for permanent regular warrant officer promotions under section 559 of title 10, also repealed, and it was also possible for a limited number of outstanding individuals to be selected early from among below-zone candidates for the grade of chief warrant officer, W–3.

Under section 574(e) of title 10, a chief warrant officer is not eligible to be considered for promotion to the next higher grade until he or she has completed three years of service in current grade.

Additionally, section 575(b)(1) of title 10 limits below-zone selection opportunity to those being considered for promotion to chief warrant officer, W–4, and chief warrant officer, W–5.

This legislation is intended to improve the management of the Services' chief warrant officer communities by reducing the minimum time in grade required for chief warrant officers to be considered for promotion to the next higher grade from three years to two years, thereby allowing the opportunity for early selection, and to authorize below-zone selection opportunity for promotion to the grade of chief warrant officer, W–3, similar to that currently authorized for promotion to the grades of chief warrant officer, W–4, and chief warrant officer, W–5.

With due-course promotions occurring after four years' time in grade, as they now occur in the Department of the Navy, the requirement for chief warrant officers to have three years in grade to be considered for promotion has the effect of not permitting any early selections. Reducing the minimum time in grade for promotion consideration to two years would allow for a small number of individuals to be selected from among below-zone candidates, and to be promoted one year early after actually serving three years in grade. Additionally, authorizing early selection to chief warrant officer, W–3, would permit recognition as appropriate of the experience and competence of these individuals. For example, the average Navy chief warrant officer, W–2, has almost 18 years enlisted service when commissioned in that grade.

Chief warrant officers provide the services with commissioned officers who possess invaluable technical expertise, leadership and managerial skills developed during enlisted service and through formal education. This legislation is needed to identify and reward the small number of exceptionally talented chief warrant officers whose demonstrated performance and strong leadership are deserving of special recognition by being selected for promotion ahead of their peers, thereby enhancing morale and maintaining the vitality of the entire community.

This proposal would not result in any increased cost to the Department of the Navy, other services, or the Department of Defense.

Section 573. Retirement of Director of Admissions, United States Military Academy, for years of service

This section would amend section 3920 of title 10 to authorize the Secretary of the Army to retire the Director of Admissions, United States Military Academy, after 30 years of service as a commissioned officer. Currently, under section 1251(a) of title 10, the permanent professors at the Academy and the Director of Admissions can serve until the age of 64. Under section 3920, however, the Secretary of the Army may direct the retirement of a permanent professor after 30 years of service. This section would provide the Secretary of the Army with the same retirement authority over the Director of Admissions.

Title VI—Compensation and Other Personnel Benefits

Subtitle A—Pay and Allowances

Section 601. Military pay raise for fiscal year 1995

The purpose of this section is to obtain one-time relief from the provisions of 37 U.S.C. 1009 and, thereby, permit an adjustment to monthly Basic Allowance for Quarters (BAQ) rates that exceeds the overall average percentage increase permitted in subsection (b)(3) without recourse to Presidential action authorized in subsection (c). With regard to January 1, 1996, the annualization of the General Schedule rates by statute would result in a basic allowance for quarters average rate increase of 2.4 percent to those rates in force on January 1, 1995. As the result of the recent Department of Defense study addressing military quality-of-life issues, the Secretary of Defense, in consultation with the Chairman, Joint Chiefs of Staff agreed to the programming and budgeting of an additional $43 Million in Fiscal Year 1996 and equivalent out-year Basic Allowance for Quarters funding through Fiscal Year 2001 to improve service member reimbursement and living accommodations. Execution of the Fiscal Year 1996 program at this funding level, as an augment to annualization of the General Schedule rates, will result in an overall Basic Allowance for Quarters rate increase of 3.4 percent to those rates in force on January 1, 1995.

As noted by the joint House-Senate Conference Committee that considered the 1988/1989 Defense Authorization Act, ''in 1985 the basic allowance for quarters rates [were] restructured so that they would cover 65 percent of national median housing costs in each pay grade.'' Since the 1985 restructuring, BAQ rates have declined to under 59 percent of the national housing median. Combined with funding caps to the variable housing allowance program, service members now absorb over 21 percent of their housing costs instead of the congressional intent of 15 percent. Support for the use of this additional funding and establishment of the 3.4 percent increase in basic allowance for quarters for Fiscal Year 1996 is executed to reduce the percent of out-of-pocket housing costs service members pay by one percent through Fiscal Year 2001.

This improvement of quality-of-life initiative will help defray the cost of off-base housing for military members, improve the adequacy of these quarters and, as result, contribute to force readiness via improved morale, individual readiness and retention of personnel.

The following amounts are included in the President's Fiscal Year 1996 budget submission to reflect enactment of this legislation:

[In millions of dollars]

Fiscal year 1996	43.0
Fiscal year 1997	43.8
Fiscal year 1998	44.6
Fiscal year 1999	45.6
Fiscal year 2000	46.9
Fiscal year 2001	48.2

Section 602. Evacuation allowances that permits equal treatment of military dependents to civilians and their dependents

Subsection (a) amends section 405a(a) of title 37 by changing ''ordered'' each place it appears to ''officially authorized or ordered'' in each instance. The purpose for this change is to equalize evacuation allowances to ensure that treatment of dependents of military personnel is equal to that of civilian dependents.

The Foreign Service Act of 1980 (Public Law 96–465) broadened section 5522 of title 5 to allow advance pay along with travel and transportation allowances to civilians and

their dependents whenever they are officially authorized or ordered to leave an overseas area due to unsettled conditions. Congress believed this change was in the best interest of the Government and the individual by providing flexible requirements in this area and by allowing the Government to more easily order departures of dependents and nonessential personnel without ordering a full scale evacuation. Similar treatment for military dependents is required as a matter of equity since military dependents are evacuated from an overseas location along with civilian employees and their dependents. This small change will allow the Chief of Diplomatic Mission authority to treat military dependents identical to civilians and their dependents by ''authorizing'' as well as ''ordering'' military dependents to evacuate and ensure our policies are consistent with the Department of State's evacuation procedures.

Enactment of this legislative proposal will not cause an increase in the budgetary requirements of the Department of Defense.

Section 603. Continuous entitlement to career sea pay for crewmembers of ships designated as tenders

The purpose of this section is to modify current law by specifying duty on board submarine and destroyer tenders as qualifying for career sea pay, removing the requirement for the tender to be away from homeport in order to support career sea pay eligibility.

Title 37 distinguishes between ships with a primary mission accomplished underway (continuous career sea pay entitlement) and ships with a primary mission accomplished in port (non-continuous career sea pay entitlement).

In 1980, when the Secretary of the Navy Hidalgo presented to Congress the proposal that led to the current career sea pay legislation, he explained that tenders were the most representative class of ships that met non-continuous career sea criteria because their primary mission, at that time, was accomplished in port.

In 1988, the fact that assignment to tender duty involved the same intensive, arduous operational environment as other shipboard duty (with accompanying continuous career sea pay entitlement) was recognized by Congress when section 305a(d)(2) of title 37 was amended by Public Law 100–456 to credit tender crewmembers with all time performed (both underway and in port) aboard those ships as cumulative day-for-day longevity for sea service time. Before that time, both sea service time (longevity) *and* the actual entitlement to career sea pay for non-continuous entitlement ships accrued only after the ship was underway for more than 30 consecutive days.

Navy's drawdown in recent years has added to the demands on tender crews, making them unquestionably deserving of continuous career sea pay entitlement. This considerable increase in operational tempo has resulted from continuing demands preparing deploying units for overseas duty, as well as being required to assist in the numerous decommissioning as a result of Navy's ship drawdown.

These demands on the crews of our tenders are further exacerbated by the drawdown of the tenders themselves. By October 1, 1995, the tender fleet will have been reduced from 17 to 4 ships (two homeported overseas (La Maddalena, Sardinia and Guam) and the remaining two in the United States (one per coast)).

Today, tender crews, on fewer ships, are experiencing more underway time and, when in port, are facing the same or more rigorous demands and working hours as the crews of the continuous career sea pay ships they support. The proposed legislation would remove the significant pay inequity that currently exists for crewmembers assigned to those submarine and destroyer tenders.

Enactment of this proposed legislation would result in the following expenditures by the Department of Defense (Dollars in Millions):

	Fiscal year 1996	Fiscal year 1997	Fiscal year 1998	Fiscal year 1999	Fiscal year 2000
Army N/A	.....	.....	.....	.....	.....
Air Force	N/A	.....	.....	.....	.....
Navy	10.0	10.0	10.0	10.0	10.0
Marine Corps [1]	.....	.....	.....	.....	.....

[1] Negligible (<50K/yr)

Section 604. Increase in the subsistence allowance payable to a member of the Senior Reserve Officers' Training Corps

This section would increase the monthly subsistence allowance for Senior Reserve Officers' Training Corps cadets/midshipmen to $200 per month, effective August 1, 1996 (start of 1996–97 school year). The current stipend, using cumulative increases in the Consumer Price Index, CPI–Food component, and subsistence allowances of active duty members, is worth only $25 to $28 in 1994 dollars. The increase would be in addition to the $50 monthly increase authorized in section 603 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2782), and is necessary to reverse a growing shortage in Reserve Officers' Training Corps enrollment. Currently, the Army and the Air Force are operating approximately 20 percent short of enrollment goals. Navy is meeting overall enrollment objectives, but the mix of academic disciplines does not fully match its objectives.

Section 605. Dislocation allowance (DLA) for base realignment and closure (BRAC) moves

This section would authorize the current dislocation allowance entitlement to Service members who must relocate in a base realignment and closure location when their mission has not changed. Current law requires that a Service member must change jobs (receive orders) and have a government funded movement of household goods to be entitled to dislocation allowance. The requirement to change jobs to be authorized this entitlement places a financial strain on some Service members at base realignment and closure locations. Most members move to a new duty station with base realignment and closure but some (recruiters, ROTC instructors, etc.) must remain in the area because their mission has not changed. Although most of these members move locally, the costs (security and utility deposits) incurred during preparation for and during the move require an outlay of funds that should be defrayed by a dislocation allowance.

Section 606. Family separation allowance (FSA–II)

This section would continue the authorization for entitlement to FSA–II for members embarked on board a ship (away from their home port) or on temporary duty (away from their permanent duty station) for 30 consecutive days, whose dependents were authorized under 37 U.S.C. 406 (permanent change of station (PCS)) to accompany the member to the homeport or permanent duty station, but voluntarily chose not to do so. Although this allowance historically has been paid to continental United States (CONUS) geographic bachelors, and continued payment is funded in Service budgets, the Defense Finance and Accounting Service has advised that recent legal interpretations prohibit continued payments unless the statute is amended. This would apply needed corrections. Since this action simply sustains the status quo, there are no new funding demands associated with enactment.

Section 607. Authorization of payment of basic allowance for quarters to certain members of the uniformed services assigned to sea duty

This section would provide the entitlement of basic allowance for quarters (BAQ) and variable housing allowance (VHA) (or overseas housing allowance (OHA) if assigned to ship homeported overseas) to single E–6 (Petty Officer First Class) personnel assigned to shipboard sea duty. Currently only pay grades E–7 (Chief Petty Officer) and above are entitled to BAQ–VHA (or OHA) based on section 403 of title 37 while assigned to shipboard sea duty. This proposal would provide quality of life/compensation relief to a small-but-senior leadership group (ages 26–40+; 4,000 people) whose 60 month-at-sea/24-to-36-month-ashore assignment rotations prevent them from establishing and maintaining permanent residence ashore commensurate with their leadership position.

Subtitle B—Income Tax Matters

Section 611. Exclusion of combat pay from withholding limited to amount excludable from gross income

There is no income tax withholding under section 3401(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 3401(a)(1)) with respect to military pay for a month in which a member of the Armed Forces of the United States is entitled to the benefits of section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112) (sec. 3401(a)(1)). With respect to enlisted personnel, this income tax withholding rule parallels the exclusion from income under section 112; there is total exemption from income tax withholding and total exclusion from income. With respect to officers, however, the withholding rule is not parallel; there is total exemption from income tax withholding, although the exclusion from income is limited to $500 per month. The bill makes the income tax withholding exemption rules parallel to the rules providing an exclusion from income for combat pay.

Subtitle C—Bonuses and Special and Incentive Pays

Section 621. Aviation career incentive pay (ACIP) gates

This section would reduce the initial ACIP operational flying requirement (known as the ''flight gate'') from 9 of the first 12 years to instead stipulate 8 of the first 12 years. As a result of the drawdown, the loss of flying billets, the increased time to promotion, and the increased emphasis on non-flying duty (Washington, joint duty, graduate education), nearly 30% of Naval aviators in year groups '86, '87, and '88 will fail to meet their initial flight gate. Similar patterns are found in other Services. This proposal would provide a more reasonable (based on prevailing career patterns) way for aviators to ''make their gates'' and continue to receive ACIP, while still generating a tougher standard than that which existed immediately prior to enactment of the current (9/12) gate. There are no new costs associated with enactment, because affected Services have budgeted under the assumption that waivers (which currently are authorized under law) would continue to be Service-approved. This change adjusts the standard, to recognize the current density of career-enhancing (non-flying) duty demands, while reducing the overhead associated with processing of those waivers.

Section 622. Expiring authorities

Subsections (a) through (e) amend sections 308b(f), 308c(e), 308e(e), 308h(g) and 308i(I) of title 37, United States Code, to extend the authority to pay bonuses for (1) enlistment, reenlistment or affiliation with the Selective

Reserve, (2) enlistment, reenlistment or extension of an enlistment in the Ready Reserve other than the Selected Reserve, and (3) enlistment in the Selected Reserve of individuals with prior service. These authorities currently expire on September 30, 1996. Termination of these Reserve bonus programs would adversely impact the readiness of Reserve component units by limiting the ability to recruit individuals possessing critical skills or qualified to train for critical skills and to ensure necessary manning levels in specific critical units.

Subsections (f) through (h) amend section 2130a(a)(1) of title 10, United States Code, and sections 302d(a)(1) and 302e(a)(1) of title 37, United States Code, to extend the authority to pay (a) a nurse officer candidate accession bonus, (b) an accession bonus for registered nurses, and (c) incentive Special pay to military Certified Registered Nurse Anesthetists. The original legislation was effective November 29, 1989 as part of the National Defense Authorization Act for Fiscal Year 1990. Under current legislation, the authority for these programs will expire on September 30, 1996. Each of these valuable programs has been successful in helping the Military Departments obtain needed numbers of professional nurses on active duty. Shortages of nurses with a qualifying degree continue to make recruiting of nurses difficult in light of intense competition with the private sector. The Department believes that the nurse accession bonus is necessary to attract new graduates from colleges and universities that award a Bachelor's of Science in Nursing.

Subsection (i) amends section 308(g) of title 37, United States Code, to extend the authority to pay reenlistment bonus to active duty service members who reenlist or who extend their enlistment in a regular component of the service concerned for at least three years. This authority currently expires on September 30, 1996.

Subsection (j) amends section 308(c) of title 37, United States Code, to extend the authority to pay enlistment bonus to a person who enlists in an armed force for at least four years in a skill designated as critical, or who extends his initial period of active duty in that armed force to a total of at least four years in a skill designated as critical. This authority currently expires on September 30, 1996.

Subsection (k) amends section 308f(c) of title 37, United States Code, to extend the authority to pay enlistment bonus to a person who, among other qualifications, enlists in the Army for at least three years in a skill designated as critical. This authority currently expires on September 30, 1996.

Subsection (1) amends section 308d(c) of title 37, United States Code, to extend the authority to which permits the payment of additional compensation to enlisted members of the Selected Reserve assigned to high priority units, so designated by the Secretary concerned because that unit has experienced or reasonably might be expected to experience, critical personnel shortages. This authority currently expires on September 30, 1996.

Subsection (m) amends section 2172(d) of title 10, United States Code, to extend the authority which permits the repayment by the Secretary concerned of educational loans of health professionals who serve in the Selected Reserve and who possess professional qualifications in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages. This authority currently expires on October 1, 1996. Termination of Reserve health professional incentive programs would limit the ability of the Reserve components to fill shortages in the designated health professionals.

Subsection (n) amends section 613(d) of the National Defense Authorization Act for Fiscal Year 1989 (37 U.S.C. 302 note) to extend the authority which permits payment of special pay to a health care professional who is qualified in a specialty designated by regulation as a critically short wartime specialty and who agrees to serve in the Selected Reserve for at least one year. This authority currently expires on September 30, 1996. Extension of this authority will allow the Department of Defense to conclude a test program of a reserve medical bonus.

Subsections (o) through (q) amend sections 312(e), 312b(c), and 312c(d) of title 37, United States Code, to extend the authority to pay certain bonuses to attract and retain top quality nuclear career officers. These authorities currently expires on September 30, 1996 or October 1, 1996. Nuclear officer shortfalls still exist, and the Department of the Navy is experiencing a climate of particularly law retention among junior nuclear trained officers. Submarine junior officer retention is at a 15-year low. Historically, the special pay for nuclear qualified officers extending period of active service and the nuclear career annual incentive bonus have been instrumental in correcting these shortfalls. The Department of the Navy continues also to come short of nuclear officer accession goals (92% of goal reached in fiscal year 1994). The nuclear career accession bonus is a tool that allows the Department of the Navy to attract top junior officers into the nuclear program.

Subsections (r) through (t) amend sections 3359(b), 8359(b), 3380(d) and 8380(d) of title 10, United States Code, and section 1016(d) of the Department of Defense Authorization Act, 1984, to extend certain reserve officer management authorities extended by section 514 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1649). These authorities currently expire on September 30, 1995. No further extension will be necessary; the Reserve Officer Personnel Management Act, which takes effect on October 1, 1996, provides permanent fixes for the problems addressed by the extension of these expiring authorities.

Subsection (u) amends section 1214 of the Merchant Marine Act, 1936, to extend the authority to provide war risk insurance. This authority currently expires on June 30, 1995. Use of the self-insurance authority saved $500 million during Operation Desert Shield and Operation Desert Storm.

Subsection (v) amends section 301b(a) of title 37, United States Code, to make permanent the aviation officer retention bonus. This authority currently expires on September 30, 1996. Making this authority permanent is necessary to counter a decade-long problem in aviator retention that has not been solved, and will not be solved by the time the current authority expires in September 1996. This bonus represents a vital component of aviation readiness since it keeps seasoned aviators in the military, assuring a higher level of performance and safety. Moreover, the cost of this bonus represents a fraction of the costs associated with training new aviators to overcome retention deficits that would worsen if this authority were allowed to lapse.

Aviation continuation pay is a Congressionally authorized incentive program paid to eligible aviators who, upon completion of their minimum service requirement, agree to remain on active duty in a flying status through their fourteenth year of commissioned service. The sole purpose of aviation continuation pay is to ensure adequate inventories of pilots and other flight officers to meet each aviation sub-community's department head requirements.

Despite the drawdown in the Department of Defense, aviation continuation pay is still used as a valuable tool to ensure critically manned aviation sub-communities maintained enough aviators to fill department head billets. For example, Naval Aviation has sub-communities that did not downsize. As a matter of fact, the FA–18 community continued to grow through the downsizing years.

As aviation forces begin to stabilize, retention of qualified and well trained aviators will continue to be an issue. For example, the numbers of aviators accessed into the Navy in the 1990's is considerably less than what was brought in the 1980's. Although the Navy is paying aviation continuation pay to only 6 to 14 aviation sub-communities today, that number is predicted to increase in the out years because of the need to keep a higher percentage of the smaller force throughout Naval Aviation. In addition, the airline industry will have 20,000 of 57,000 pilots that will reach retirement age between 1994 and 2004, opening up employment opportunities for military pilots. The Navy will have a tougher job keeping qualified aviators in the service, and aviation continuation pay is the one tool the Navy has to ensure enough aviators remain in the service to meet requirements. The Army and the Air Force are similarly situated.

Pilot retention in the military departments is not a temporary problem; the effect of airline hiring and the persistent strength of the economy of the United States is likely to exert a steady demand for military trained pilots in the commercial airline industry for the foreseeable future. Additionally, a need exist; to provide permanent and increased bonus authority in order to have the flexibility to solve critical skill shortages as they manifest themselves in projections, rather than incur losses in critical skills and lose the time and experience levels that would result while training replacement aviators.

Subsection (w) amends section 5721 of title 10 to make permanent the authority for temporary promotions of certain Navy lieutenants.

The Navy has a shortage of available qualified officers to fill key engineering billets. To counter this shortage, some exceptional lieutenants are assigned to lieutenant commander engineering related assignments. These are extremely difficult and challenging assignments that include Engineer Officer on nuclear powered submarines, Engineer Officer on Nuclear powered cruisers, Engineer Officer on Ticonderoga class cruisers, Engineer Officer on CLF ships, Members of the fleet Commander-in-Chief's Nuclear Propulsion Examining Board or Propulsion Examining Board.

SPOT promotion authority provides a flexible *low cost solution* to precisely target the shortfall of skilled engineering officers. It is limited by the Secretary of the Navy's policy to only key engineering billets for which a shortage of available *qualified officers exists.* SPOT promotions occur within statutory lieutenant commander ceilings with a 1:1 reduction of regular promotions to lieutenant commander. Officers are promoted only while serving in a qualifying billet. The program accounts for 100–120 SPOT promotions a year.

An absolute shortage of permanent lieutenant commanders exists within those line communities that fill Lieutenant Commander SPOT billets. The table below summarizes the specific shortages of permanent Lieutenant Commanders by community.

Designator	Total inventory	Community specific billets	Shortfall
1110	1,317	1,406	89
1120	635	819	184
6400	62	67	5
6130	55	73	18
6230	25	24	−1
Total	2,094	2,389	295

The shortfall becomes significantly more pronounced if the inventory is limited to those permanent Lieutenant Commanders with the skills required for SPOT promotion billets.

Designator	Total inventory	Community specific billets	Shortfall
1110	1,095	1,406	311
1120	436	819	383
6400	62	67	5
6130	55	73	18
6230	25	24	−1
Total	1,673	2,389	716

The qualified lieutenant commander inventory includes those officers who are Engineering Officer of the Watch qualified (for conventional assignments) or have current nuclear engineer qualifications (for nuclear assignments).

The number of community specific billets actually understates the billet fill requirements in the case of unrestricted line officers who must also fill a fair share of 1000/1050 billets.

The following table summarizes the distribution of SPOT promotions that have helped correct some of the depicted shortfalls:

Designator	Total SPOT billets	Filled by lieutenant [1]	Filled by SPOT promoted LCDR	Filled by permanent LCDR
1110	171	37	49	85
1120	187	33	8a1	73
6400,6130,6230	62	15	322	15
Total	420	85	162	173

These lieutenants have not met the three month evaluation time in billet requirement to be recommended and approved for SPOT promotion.

The continued use of SPOT promotions remain necessary due to the critical shortage of officers qualified to fill engineer officer, engineering departmental principal assistants, engineering material officer and engineering staff billets directly supporting fleet engineering readiness. Originally enacted in 1965, SPOT promotion has proven its value as a strong incentive and retention tool for our top officers. It remains a very effective management tool to ensure our ability to fill extremely demanding billets with the best officers.

Subsection (x) amends section 1105 of title 10, United States Code, as enacted by the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, Nov. 30, 1993; 107 Stat. 1691) by repealing subsection (h) which is a sunset clause for the provision to expire as of September 30, 1995.

The specialized treatment services program (STS) established new requirements for CHAMPUS beneficiaries to obtain certain highly specialized health care services from selected sources, either military or civilian. The program will not be fully implemented by its expiration date. Full implementation is necessary for managed care within the Department of Defense. This program will provide for DOD beneficiaries quality care while assuring for appropriate utilization of specialized medical health care services at the most reasonable cost.

Certain military and civilian treatment facilities, based on demonstrated capability, are being designated as Specialized Treatment Services Facilities for some highly specialized types of medical care. The mechanism for requiring CHAMPUS beneficiaries to use the STS Facilities is similar to the familiar Non-availability Statement but with either a nationwide or 200-mile catchment area instead of the normal 40-mile catchment area. Criteria for demonstrated capability for STS designation have been developed by the Assistant Secretary of Defense for Health Affairs and provided to the military departments. Nationwide STS designations have been approved for bone marrow transplantation and liver transplantation. The Regional Lead Agents are in the process of developing mechanisms for approving STS designation within their respective regions. STS authority should be extended to allow completion of this program.

Subtitle D—Travel and Transportation Allowances

Section 631. Authority to expend appropriated funds to pay certain actual expenses of Reservists

This section amends section 404(j) of title 37 (as added by section 622 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2784)) by authorizing the expenditure of appropriated funds to pay for contract quarters as lodging in kind when on-base quarters are not available during annual training or inactive duty training for Reservists who are otherwise entitled to travel and transportation allowances in conjunction with their duty. The Department of Defense Appropriations Acts for Fiscal Years 1993, 1994 and 1995 have included a provision which authorizes such expenditures. This recurring provision also provides that ''if lodging in kind is provided, any authorized service charge or cost of such lodging may be paid directly from funds appropriated for operation and maintenance of the reserve component of the member concerned.'' The recurring provision in the Appropriations Act reaffirms actual practice over more than two decades which has provided cost-efficient accommodations to Reservists who travel at their own expense to components for skilled and trained manpower.

Section 632. Flexibility when authorizing shipment of a motor vehicle incident to permanent change of station orders

Subsection (a) of this section amends section 2634(a)(4) of title 10 to authorize the shipment of privately owned motor vehicles for a member of the armed forces by the most economical means. Current statute only authorizes shipment by surface means. In some underdeveloped or remote areas of the world, shipment by air is oftentimes more economical than shipment by surface transportation.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense. By amending this section, the permanent change of station (PCS) funding would not increase, and should actually decrease. Significant numbers of privately owned vehicles would not be shipped by air; however, cost savings would be realized. Personnel quality of life improvements would also be realized since surface transportation in these areas often take many months in addition to being an expensive mode of transportation.

Section 633. Authorization of return to United States of formerly dependent children who attain age overseas

This section would authorize the return of certain formerly-dependent children to the United States. By law, a child 21 or 22 years of age who is a full-time student may travel at government expense to a member's overseas duty station. However, if the child loses that dependent status while in the overseas area, the government will not return the child to the United States until the member receives subsequent permanent change of station (PCS) orders. This proposal would expand the entitlement to include those dependents over 21 who are full-time students and subsequently lose their dependency eligibility by either turning 23 or because they are no longer enrolled full-time in school. In other words, this simply would permit acceleration of the final-authorized trip to the continental United States (CONUS). This is a no-cost initiative.

Subtitle E—Retired Pay, Insurance, and Survivor Benefits

Section 641. Retired pay for non-regular service

This section amends section 1331 of title 10, United States Code, by inserting a new subsection (d), and by redesignating the existing sections (d) and (e) as (e) and (f), respectively. The new subsection (d) provides that a non-regular member is not eligible for retired pay if he or she is convicted by court-martial of an offense under the Uniform Code of Military Justice, and the executed sentence includes death, dishonorable discharge, a bad-conduct discharge, or dismissal from the service. The new subsection conforms a nonregular members's eligibility for retired pay with that of a regular member who is convicted by court-martial, and whose executed sentence includes death, dishonorable discharge, a bad conduct discharge or dismissal from the service. See generally, 44 Comp. Gen. 51 (1964); 44 Comp. Gen. 227 (1964). See also 5 U.S.C. 8312–8322 concerning forfeiture of annuities and retired pay.

Section 642. Fiscal Year 1996 cost-of-living adjustment for military retirees

This section makes the military retired pay cost-of-living adjustment payable for March 1996 rather than September 1996.

Section 643. Automatic servicemember's group life insurance (SGLI)

This section would automatically enroll members at the maximum insurance level of $200,000 instead of the $100,000 level currently in law. Members may now increase their coverage up to $200,000 by making an election for such coverage. However, sometimes such elections are not passed to the finance offices for immediate collection of premiums, and survivors have complained that their member did not have the proper opportunity to elect the highest benefit level. Having automatic coverage at the maximum would ensure coverage is no less than desired. Coverage could be declined or reduced if the member does not want the maximum. Those who currently are insured and who have not made elections and are in receipt of coverage of $100,000 would automatically have their coverage increased to $200,000.

Section 644. Improved death and disability benefits for Reservists

This section amends sections 1074a and 1481 of title 10 and sections 204 and 206 of title 37 by providing reservists performing inactive duty training the same death and disability benefits as active duty members. Although previous authorization bills have corrected some of the inequities, there are still instances when a reservist is not covered for certain disability or death benefits if the occurrence happens after sign-out between successive training periods.This proposal would

extend death and disability benefits to all reservists from the time they depart to perform authorized inactive duty training until the reservist returns from that duty. Reservists who return home between successive inactive duty training days would be covered portal to portal only. There are no additional costs associated with this provision.

Subtitle F—Separation Pay

Section 651. Transitional compensation for dependents of members of the Armed Forces separated for dependent abuse

This section would amend authorization to include transitional compensation for dependents whose sponsor forfeited all pay and allowances, but was not separated from the Service (e.g., members court-martialed). Current language of section 1059 of title 10, as added by section 554(a) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1663) and redesignated and amended by sections 535 and 1070(a)(5) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2762 and 2855) does not allow this payment. This appears to be an administrative oversight. This change would allow payment as apparently intended by Congress. No additional cost would result, since costs associated with this technical amendment would previously have been recognized in the course of enactment of the National Defense Authorization Act for Fiscal Year 1995.

Subtitle G—Other Matters

Section 661. Military clothing sales stores, replacement sales

This section amends title 10, United States Code, to add new section 7606. The purpose of this amendment is to provide the Navy and Marine Corps the same statutory authority currently granted to the Army and Air Force under title 10, United States Code, section 4621 and section 9621 respectively.

Based on a variety of studies and tests, the Marine Corps has determined that it is most cost effective to conduct in-kind replacement sales through the Military Clothing Sales Stores managed by the Marine Corps Exchange system. These in-kind replacement sales are lost, damaged, or destroyed individual equipment for which individual Marines and sailors are responsible to the Government.

Unlike the authority granted to the Army and Air Force under title 10, United States Code, section 4621 and section 9621 respectively, there is no specific statutory authority allowing the Navy or Marine Corps to sell individual equipment. This legislation will create parity throughout the Department of Defense.

This proposal will be effected at no additional cost to the Department of Defense or the Department of the Navy.

Title VII—Civilian Employees

Subtitle A—Civilian Personnel Policy

Section 701. Holidays and alternative work schedules

This section would amend title 5 to change the designation of holidays for employees on alternative work schedules. When Monday holidays fall on an employee's day off, under section 6103 of title 5, he or she must take the preceding Friday off. This creates a severe staffing shortage on Fridays before holiday weekends. The proposed language would make Tuesday the employee's day off rather than the preceding Friday.

Section 702. Elimination of 120-day limit on details

This section amends section 3341 of title 5 to eliminate the requirement that temporary assignments (details) of employees be made in 120-day increments and allows details to be documented and authorized up to the time required (within the limits specified in other statutory, regulatory and administrative provisions).

Section 703. Elimination of part-time employment reports

This section strikes section 3407 of title 5 which requires that agencies report progress on the part-time career employment program to the Office of Personnel Management twice yearly. Information for reports is available through the Central Personnel Data File and agencies can monitor the program through personnel management evaluation programs.

Subtitle B—Compensation and Other Personnel Benefits

Section 711. Repeal of prohibition on payment of lodging expenses when adequate Government quarters are available

The purpose of the proposed legislation is to repeal section 1589 of title 10, which prohibits the Department of Defense from paying a lodging expense to a civilian employee who does not use adequate available Government lodgings while on temporary duty. Although the purpose of section 1589 is to reduce the Department of Defense travel costs, the law can increase travel costs because it considers only lodging costs, not overall travel costs. Deleting the provision would enable Department of Defense travelers, supervisors and commanders to make more efficient lodgings decisions, with potential cost savings for the trip as a whole.

The title 10 provision (added in 1985 to codify similar provisions in the Department of Defense Appropriations Acts from 1977) prohibits payment of a lodging expense to civilian employees who don't use adequate available Government quarters. The Fiscal Year 1978 Committee Report on Department of Defense Appropriations (H. Rep. No. 95–451) notes that if employees on temporary duty at military installations for school, training and other work assignments were directed to use available Government quarters, ''many thousands of dollars could be saved.''

When a temporary duty trip involves business on and off-base, the cost-effective business decision, considering factors such as rental car costs, must be made on a case-by-case basis. The current law allows no flexibility for the cost-conscious resource manager. To be reimbursed for lodging, the traveler must stay on-base whether it is efficient or not. Further, in temporary travel when team integrity is essential, the mission may preclude employees staying in available government lodgings. To maintain team integrity under current law when quarters are adequate for only the less senior members of the team, quarters must be determined ''not available'' for each member of the team, imposing an unnecessary administrative cost.

The Department is committed to improving the efficiency of the temporary duty travel system to enhance mission accomplishment, reduce costs, and improve customer service. The proposal would be a significant step in this direction.

Enactment of the legislative proposal will not cause an increase in the budgetary requirements of the Department.

Section 712. Overtime exemption for nonappropriated fund (NAF) employees

This section amends section 6121(2) of title 5 so that nonexempt NAF employees may be put on a compressed schedule without the entitlement to overtime for hours worked in excess of 40 hours a week.

Subtitle C—Separation Provisions

Section 721. Continued health insurance coverage

Section 8905a of title 5, as amended by this proposal, extends continued health insurance coverage and payment of employer portion of the premium plus administrative fee for surplus employees who voluntarily resign in response to realignments, installation closures, and downsizing of the Department of Defense. This proposal will help avoid reduction-in-force (RIF) by increasing the number of surplus employees voluntarily resigning. Currently, employees must wait to receive a RIF notice to qualify for this benefit. Increased cost would be more than offset by the savings generated by earlier separation of 120 days or more. This benefit would only apply to employees who have been designated as surplus by the Department of Defense.

Section 722. Lump sum severance payments

This section concerns lump sum payment of severance pay. Currently severance pay is paid on a bi-weekly basis for up to one year based on years of service and age of the employee. This proposal would permit, at the discretion of the agency, lump sum payment of the severance pay credit to the employee upon request. Many eligible employees would prefer to receive the total amount in order to start new businesses or relocate.

Section 723. Civilian Voluntary Release Program

This section would allow employees who are not affected by a reduction-in-force (RIF) to volunteer to be RIF separated in place of other employees who are scheduled for RIF separation. Some employees (e.g., retirement eligible, employees with their own businesses, employees with good prospects for employment elsewhere), whose RIF retention standing them from RIF, can afford to volunteer to be RIF separated in place of other employees who are scheduled for RIF separation. The proposal would permit these more senior employees to volunteer to be RIF separated. Management would be tasked to publish implementing regulations.

Title VIII—Health Care Provisions

Subtitle A—Health Care Management

Section 801. Codification of CHAMPUS Physician Payment Reform Program.

This section would codify a provision of the Department of Defense Appropriations Act for 1995, section 8009, which establishes a process for gradually reducing CHAMPUS maximum payments amounts down toward the limits for similar services under Medicare, with special consideration given to preserving access to care and limiting balance billing by providers. The payment limits in use for Medicare are the product of long-term efforts to achieve a rational payment system for physicians, using resource-based relative values to determine appropriate payments rather than basing payment on the historical charges submitted by providers. The Medicare payment limits represent a determination by the largest Federal payer of what is fair and reasonable payment for health care services; as such, they provide appropriate target values for CHAMPUS. Additionally, this provision includes special authority to exceed the allowable amounts in cases where managed care plan enrollees obtain emergency care from non-network providers, to enhance the benefits of enrollment.

Additionally, this provision would build on the successful example set for inpatient hospital reimbursement: the CHAMPUS DRG-Based Payment System is modeled closely on the Medicare Prospective Payment System, with modifications as necessary to reflect the differences in the programs and the beneficiaries they serve. The Department of Defense Authorization Act, 1984 (Public Law 98–94), provided CHAMPUS with statutory authority to reimburse institutional providers following Medicare reimbursement rules.

Under the authority proposed in this section, the Department would make a transition from its current system of prevailing charges for professional services to payment limits similar to the Medicare Fee Schedule. CHAMPUS allowable payment limits for physicians are approximately 30 percent higher than those under Medicare, so there is room for constraint without unduly penalizing providers or limiting beneficiary access to high quality care. Exceptions to the Fee Schedule limits would be made to maintain higher payments when needed to assure adequate access to care for our beneficiaries. In order to assure a smooth transition to the new payment limits, reductions in payments for specific procedures would be restricted to no more than 15 percent per year.

In order to protect beneficiaries, limitations on balance billing for CHAMPUS would be established similar to those in effect for Medicare, which limits balance billing to 15 percent above the allowable amount. This step will complement the Congress' action in the Department of Defense Authorization Act for 1992 to require providers generally to file claims for beneficiaries.

This section amends Section 1079(h) of title 10, United States Code, to limit CHAMPUS payments to the amounts payable under Medicare for similar procedures, and provides for a gradual transition of CHAMPUS payment amounts to Medicare levels. Additionally, it provides for exceptions if needed to protect beneficiary access to care, and limits beneficiary liability for excess charges (balance billing) to the limits established for Medicare. It also includes a provision to permit payment of amounts greater than allowable amounts when needed to protect managed care plan enrollees from balance billing when they obtain emergency care from nonparticipating providers.

Because CHAMPUS payment limits were substantially higher than Medicare's, implementing this approach for individual professional providers should produce cost avoidance of approximately $500 million over the next five years. These estimates of cost avoidance have been incorporated into Department of Defense budget projections, which assume continuation of the current Appropriations Act provisions for physician payment reforms.

Section 802. Repeal of certain limitations on reductions of medical personnel

This purpose of this section is to repeal the following provisions of law:

Section 711 of the National Defense Authorization Act for Fiscal Year 1991, as amended by section 718(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993;

Section 718(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993; and

Section 518 of the National Defense Authorization Act for Fiscal Year 1993, as amended by section 716 of the National Defense Authorization Act for Fiscal Year 1995.

Section 711 prohibits reductions in military and civilian health care personnel below the number of such personnel serving on September 30, 1989, unless the Department of Defense certifies to Congress that the number of personnel being reduced is excess to current and projected needs of the Services and that the reduction will not increase Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) costs.

Section 718(b) requires that effective fiscal year 1992, the total number of Navy officers serving on active duty in health professions specialties be not less than 12,510, unless Department of Defense certification is accomplished.

Section 518, as amended by section 716 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2803), requires certification for any reduction in Reserve Component medical personnel. Any Reserve reduction must be excess to the current and projected needs of the military department and be consistent with the wartime requirements identified in the final report on the comprehensive study of the military medical care system pursuant to section 733 of the National Defense Authorization Act for Fiscal Years 1992 and 1993.

With the implementation of TRICARE, the adoption of capitation based financing, and the completion of the ''733 Study'', the Department has in place the tools necessary to size and shape the Military Health Services System, without increasing CHAMPUS costs. The Department will maintain sufficient active duty and Reserve Component medical personnel to meet all wartime requirements (consistent with the ''733 Study''), and using military treatment facilities and at risk managed care support contractors, meet the peacetime health care needs of Department of Defense beneficiaries. This prohibition on personnel reductions contained in current law significantly and unnecessarily restricts the Secretary's capability to manage the Department's military and civilian personnel strengths as the Department of Defense downsize its manpower inventories.

This provision will not increase the budgetary requirements of the Department of Defense.

Subtitle B—Other Matters

Section 811. Recognition by States of military advance medical directives

Subsection (a) of this section amends title 10 by inserting a new section 1044c in chapter 53. The purpose of the amendment is to ensure that advance medical directives prepared by members of the armed forces, their spouse, or other persons eligible for legal assistance under section 1044 of title 10 are recognized as valid even though a directive might not meet the precise requirements of the state where the member, spouse, or other person is located at the time of incapacitation.

An advance medical directive is a document that indicates a person's desire concerning the medical care to be received if that person becomes incapable of making health care decisions or gives to another person the authority to make those decisions under like circumstances. The Patient Self-Determination Act (42 U.S.C. 1395cc(f)(1)) requires certain medical facilities to have procedures to handle advance medical directives. The Act, however, left the substance of the law concerning the preparation of advance medical directives to the states. The states have adopted different procedures and requirements. Because members of the armed forces and their family members travel so frequently from state to state due to reassignments and duty requirements, it is very difficult to ensure that an advance medical directive they prepared in one state will be honored in another. The American Bar Association has endorsed this proposed legislation.

Subsection (a) of the proposed section 1044c would exempt a military advance medical directive from any state requirement concerning ''form, substance, formality, or recording'' and require that a military advance medical directive be given full legal effect.

Subsection (b) of the proposed section 1044c defines a military advance medical directive.

Subsection (c) of the proposed section 1044c would require a military advance medical directive to include a statement that clearly identifies it as such and, thus, would put health care professionals on notice of the requirement to give the advance medical directive full effect.

Subsection (d) of the proposed section 1044c defines a ''state'' to include the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

Subsection (b) of this section would amend the table of sections at the beginning of chapter 53 of title 10 to reflect a new section 1044c. Subsection (c) of this section would clarify that a military advance medical directive declared prior to enactment of the amendment would be covered under the amendment.

Section 812. Closure of the Uniformed Services University of the Health Sciences

This section requires an orderly phase-out and closure of the Uniformed Services University of the Health Sciences.

Subsection (a) repeals the statutory authority for the University.

Subsection (b) establishes and orderly phase-out process, beginning in fiscal year 1996, and ending with the closure of the University not later than September 30, 1999. Under the phase-out, the Secretary of Defense will have all necessary authorities to operate the University so as to achieve an orderly phase-out. The last student class will enter in fiscal year 1995 and graduate in fiscal year 1999.

Subsection (c) makes clear that the closure of the University will not affect previously established service obligations of University graduates, nor other medical education, research, and related activities of the Department of Defense that are conducted under other authorities under law.

Subsections (d) and (e) sets forth conforming and clerical amendments.

Section 813. Repeal of the statutory restriction on use of funds for abortions

This section repeals section 1093 of title 10, United States Code, which prohibits using funds available to the Department of Defense to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. The provision being repealed is sometimes referred to as the ''Hyde Amendment''.

Title IX—Department of Defense Organization and Management

Subtitle A—Secretarial Matters

Section 901. Additional Assistant Secretary of Defense

This section increases the number of Assistant Secretaries of Defense by one. This increase will allow the Secretary of Defense to change the position of Director of Program Analysis and Evaluation to the Assistant Secretary of Defense for Program Analysis and Evaluation.

Section 902. Change in name of Assistant to the Secretary of Defense for Atomic Energy to Assistant to the Secretary of Defense for Nuclear and Chemical Programs

This section would change the name of the Assistant to the Secretary of Defense for Atomic Energy to the Assistant to the Secretary of Defense for Nuclear and Chemical Programs. Section 142 currently provides a statutory designation for the subject position. The revision is required to reflect more precisely the current functions of the position. Further the term ''atomic energy'' is obsolete with regard to current lexicon. Within the Department of Defense, the Assistant to the Secretary is responsible for advising the Secretary on nuclear energy, nuclear weapons, and chemical and biological defense program matters. The Assistant to the Secretary also serves as the Staff Director for the Nuclear Weapons Council. That

function is reflected in section 179 of title 10. The amendment to title 5 is a conforming amendment necessary to reflect the proposed change in name designation.

Subtitle B—Professional Military Education

Section 911. Inclusion of Information Resources Management College in the National Defense University

The purpose of this legislation is to add the Information Resources Management College (IRMC) to the definition of the National Defense University (NDU) contained in section 1595(d)(2) of title 10 and to add it and the Institute for National Strategic Studies (INSS) to the definition of the National Defense University contained in section 2162(d)(2) of title 10. This legislation would update the statutes to include all of the component parts of the University in both definitions and to eliminate the inconsistency between the two definitions. Further, it would clarify the authority of the Secretary of Defense to hire professors, lecturers, and instructors for the Information Resources Management College under section 1595 just as he does for the other integral components of the National Defense University. It also would update the Institute for National Strategic Studies name from ''Study'' to ''Studies.''

The National Defense University was founded by the Joint Chiefs of Staff in 1976 and initially consisted of the National War College (NWC) and the Industrial College of the Armed Forces (ICAF). The University's mission has grown as joint education and interservice strategic thought have become more dynamic and vastly more significant. Though the passage of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 dramatically highlighted the significance of its joint mission, the National Defense University has been continually evolving to meet its enhanced mission requirements since its inception. In 1981, the Armed Services Staff College (AFSC) joined it. In 1982, what is now the Information Resources Management College was established, and, in 1984, the Institute for National Strategic Studies became the last major component of the National Defense University.

Through this evolution, the statutory definition of the National Defense University has not kept pace with the University's adjustment to its enhanced mission. The existence and mission of the National Defense University were first recognized statutorily in the Goldwater-Nichols Act (e.g., see 10 U.S.C. 663(b)); however, the University was not statutorily defined until the National Defense Authorization Act for Fiscal Year 1990 added section 1595 to title 10 (Public Law 101–189; 103 Stat. 1558). There the University was defined as consisting of the Air War College, the Industrial College of the Armed Forces, and the Armed Services Staff College. The National Defense Authorization Act for the Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1626) enacted the same definition of the National Defense University by adding section 2162(d)(2) to title 10. The Institute for National Strategic Studies was added to the definition in section 1595(d) of title 10 in 1991 by the National Defense Authorization Act for the Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1452). However, that amendment did not add Institute for National Strategic Studies to section 2162(d)(2) of title 10 nor add Information Resources Management College to either sections 2162(d) or 1595(d) of title 10. This legislation will cure that inconsistency.

The proposed legislation also would further clarify the Secretary of Defense's title 10 hiring authority for the faculty of the Information Resources Management College. As with the other components of the National Defense University, the General Service grading system does not meet the needs of the traditional academic ranking system. This legislation would ensure that the Secretary has the same latitude in employing civilian faculty for all components of the National Defense University as the Service Secretaries have for their professional military schools. This is appropriate as the Information Resources Management College's mission is commensurate in importance with those of the other components of the University.

The Information Resources Management College's mission is to provide an intensive graduate level curriculum for senior Department of Defense officials, both civilians and military, in an exponentially expanding field of knowledge crucial to twenty-first century national defense. That field is the joint management of information resources as a component of national power and the integration of those resources into national strategy. The keystone of the curriculum, the Advanced Management Program, is an accredited course of graduate study. The course content includes the latest in information technology, information based warfare, acquisition and functional analysis. It demonstrates the sophistication and complexity of the subject matter as well as the Information Resources Management College's success in addressing it to date. However, Information Resources Management College is also recognized by the Defense Acquisition University to be among its level-3 Acquisition Corps granting consortium. More recently, Information Resources Management College has launched a pilot, 10-month, senior military course in the information component of national power. This course, of equal stature to National War College and Industrial College of the Armed Forces, educates future defense leadership in the art of possible future conflict and operations other than war. These courses underscore the necessity for nationally recognized faculty to maintain the highest level of instruction. To attract and retain such faculty, the Information Resources Management College needs title 10 hiring authority, just as the other components of the University do.

Enactment of the proposed legislation would not result in an increase in the budgetary requirements of the Department of Defense.

Section 912. Employment of civilians at the Asia-Pacific Center for Security Studies

The purpose of this section is to grant the Secretary of the Defense the authority to appoint, administer and compensate the civilian faculty to the Chester W. Nimitz Asia-Pacific Center for Security Studies. The National Defense University (10 U.S.C. 1595), United States Naval Academy (10 U.S.C. 6952), the United States Military Academy (10 U.S.C. 4331), the United States Air Force Academy (10 U.S.C. 9331), the Naval Postgraduate School (10 U.S.C. 7044), the Naval War College (10 U.S.C. 7478), the Army War College (10 U.S.C. 4021), the Air University (10 U.S.C. 9021) and the George C. Marshall European Center for Security Studies (10 U.S.C. 1595) have such authority for their civilian faculty.

The Asia-Pacific Center for Security Studies is a new institution chartered by the Secretary of Defense to be under the authority, direction and control of the Commander in Chief, United States Pacific Command. The center's mission is to facilitate broader understanding of the United States military, diplomatic, and economic roles in the Pacific and its military and economic relations with its allies and adversaries in the region. The center will offer advanced study and training in civil-military relations, democratic institution and nation building, and related courses to members of the United States military and military members of other Pacific nations. The mission of this critically important and innovative center will require first-rate faculty and scholars with international reputations.

Under current authority available to the Commander in Chief, United States Pacific Command, civilian faculty for the Asia-Pacific Center for Security Studies must be appointed, administered and compensated under title 5. The faculty must be classified under the General Schedule (GS) and recruitment and compensation must be limited to GS grade, occupational series and pay rates. However, the GS grading system does not meet the needs of the traditional academic ranking system wherein faculty members earn and hold rank based on educational accomplishment, experience, stature and other related academic and professional endeavors. The GS grading system also will not allow the center to hire non-United States citizen academics from international institutions. Legislation is required for the Commander in Chief, United States Pacific Command to utilize title 10 excepted service authority which will provide greater flexibility to appoint, administer and compensate the center's civilian faculty.

Section 1595 of title 10 provides for employment and compensation of civilian faculty at certain Department of Defense schools. There is no provision for civilian faculty of the Asia-Pacific Center for Security Studies.

The proposed legislation provides excepted service authority for appointing, administering and compensating the civilian faculty of the Asia-Pacific Center for Security Studies.

Subtitle C—Other Matters

Section 921. Reduction of reporting requirements

The purpose of this proposal is to reduce the Department of Defense reporting requirements determined to be unnecessary or incompatible with efficient management.

Subsection (a)—Closure of Military Child Development Centers for Uncorrected Inspection Violations.—Section 1505(f)(3) of the Military Child Care Act of 1989 requires the Secretary of Defense to inspect military child development centers not less than four times a year. All inspections should be unannounced and at least one each should be carried out by an installation representative and a major command representative. If a violation occurs, the centers have 90 days to correct it or be forced to close down. If after 90 days the violation is still not corrected, the Secretary of the military department concerned shall forward a report to both the House and Senate Armed Services committee notifying them of the closure. The report shall include (a) notice of the violation that resulted in the closing and the cost of remedying the violation; and, (b) a statement of the reasons why the violation had not been remedied as of the time of the report.

The Department of Defense has instituted a comprehensive inspection system that mirrors a check and balance system. Unannounced inspections are carried out at least four times a year at each child development center and all levels including the installation, major command, service, and Department of Defense, are inspected in this system. The Department of Defense inspection system is extremely aggressive. Additionally, there is even a multi-disciplinary Department of Defense team in place that inspects random installations each year to check the military services inspection procedures. Based on the provisions now in place the requirement for this report is no longer necessary.

Subsection (b)—Energy Savings at Military Installations.—Section 2865(e) of title 10 authorizes the Secretary of Defense to carry out a military construction project for energy conservation, not previously authorized. It directs the Secretary of Defense to notify in writing the Armed Services and Appropriations Committees in both the House and the Senate of his decision to carry out a project. The project may then only be carried out after a 21 day period after official notification of the committees.

This requirement should be eliminated since it is a notification requirement only. Currently all new military construction project plans incorporate programs to reduce energy usage and procedures to protect our environment.

Subsection (c)—Military Relocation Assistance Programs.—Section 1056 (f) of title 10 requires the Secretary of Defense to submit a report to Congress not later than 1 March of each year outlining assessments on available/affordable private-sector housing available for military members and their families, actual nonreimbursed costs associated with a permanent change of station for military members and their families, numbers of members who live on military installations and those who do not live on military installations, and the effects of the relocation assistance programs on the quality of life for members of the Armed Forces.

The Department has met all requirements outlined in this section of title 10 related to relocation assistance. Recommend termination of this report because it is a more cost-effective use of limited manpower resources of the Armed Forces to provide information when requested. The information outlined in this report could be furnished to Congress or an outside agency as needed in response to requests, saving extremely needed personnel manhours.

Subsection (d)—Limitation on Source of Funds for Nicaraguan Democratic Resistance.—Section 1351 of the National Defense Authorization Act for Fiscal Year 1987 requires the Secretary of Defense not to expend any operations and maintenance or other supplied funds in providing support to the Nicaraguan democratic resistance forces. If funds appropriated or otherwise made available to the Department of Defense are authorized by law to be used for such assistance, such funds may only be derived from amounts appropriated for procurement (other than ammunition). Before such funds are used the Secretary of Defense shall submit a report to Congress describing the specific source of the funds.

The Nicaraguan resistance is no longer in operation, so the requirement for this report is no longer valid.

Subsection (e)—Limitation on Reductions in Medical Personnel.—Section 711 of the National Defense Authorization Act for Fiscal Year 1991 requires that before the Secretary of Defense can reduce the number of medical personnel, he must certify to Congress that the number of personnel being reduced is in excess to the current and projected needs of the military departments and such a reduction will not result in an increase in Civilian Health and Medical Program of the Uniformed Services.

This certification/report was required by Congress to ensure that as the military departments and Department of Defense downsized that the medical personnel were not affected by the drawdown. Congress felt that any drawdown affecting military medical personnel could both jeopardize the care provided to members not affected by the drawdown and also drive up the cost of Civilian Health and Medical Program of the Uniformed Services. During the drawdown both military and civilian medical personnel were prohibited from participating in the reduction of forces thus protecting the medical personnel levels.

As the downsizing nears its completion and the TRICARE implementation program gets underway, the Department of Defense needs to have the flexibility to tailor its medical staff levels to correspond to the needs of the population. This certification limits the Secretary of Defense management authority and should be terminated.

Subsection (f)—Foreign National Employees Salary Increase.—Section 1584(b) of title 10 requires the Secretary of Defense to submit a report to the Appropriations and Armed Services Committees of both the House and the Senate when any salary increase granted to direct and indirect hire foreign national employees, stated as a percentage, is greater than percentage pay authorized for civilian employees of the Department of Defense or when the percentage increase is greater than the salary increase of the national government employees of the host nation.

Due to continuing annual appropriations acts these payments have been limited. The report has never been necessary and the reporting requirement should be deleted.

Subsection (g)—Civilian Positions: Guidelines for Reduction.—Section 1597 (c) and (e) of title 10 outlines the requirements for three reports from the Secretary of Defense. The first report requires the Secretary of Defense to annually submit along with budget requests a report outlining a master plan for civilians. The master plan should include the tracking of accessions and losses of civilian positions, numbers of civilian personnel both stateside and abroad, a breakdown of civilians by service and major commands, a total number of civilian employees, the number of foreign national employees, and various other requirements.

The second report permits the Secretary of Defense to provide a variation from the requirement outlined above if deemed necessary in the interest of national security. If a variation is needed, the Secretary of Defense shall immediately notify the Congress of any such variation and the reasons for such variation.

The third report prohibits the Secretary of Defense from implementing any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of a 45-day period beginning on the date which the Secretary submits to Congress a report outlining the reasons for the reduction or furlough and describing any change in workload or position requirements that will result from such reductions or furloughs.

Based on the fact that the civilian force is not as structured as the military force, data to support such a report is quite difficult to obtain. Through the submission of O&M Justification Materials and the Defense Manpower Requirements Report, information required by this report is already accessible. Based on this, the Department of Defense recommends that the first two reporting requirements be deleted.

The third reporting requirement should be deleted based on the fact that the Department of Defense already has in place procedures in DOD Directive 5410.10 to notify Congress of involuntary reductions affecting 50 or more federal civilian employees or 100 or more contractor personnel. Any additional requirements for reporting on such measures causes a significant administrative burden on the entire department including the services.

Subsection (h)—Industrial Fund Management Reports.—Section 342 of the National Defense Authorization Act for Fiscal Year 1993 requires the Secretary of Defense to submit a report at the same time the President submits the budget to Congress outlining the condition and operation of working-capital funds. A report should be furnished for each industrial fund or working capital fund. There are five separate funds, one for each service and one for the Department.

This reporting requirement should be deleted due to the nonexistence of these reports within the Department of Defense.

Subsection (i)—Elimination of Use of Class I Ozone-Depleting Substances in Certain Military Procurement Contracts.—Section 326(a) of the National Defense Authorization Act for Fiscal Year 1993 outlines a reporting requirement of the Secretary of Defense in relation to use of certain class I ozone-depleting substances. The provision noted states that no Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the Senior Acquisition Official for the procurement covered by the contract. The Senior Acquisition Official may grant the approval only if the Senior Acquisition Official determines (based upon the certification of an appropriate technical representative of this official) that a suitable substitute for the class I ozone-depleting substance is not currently available. Each official who grants an approval shall submit to the Secretary of Defense a report on that approval or determination. The Secretary of Defense shall promptly transmit to the committees on Armed Services of the Senate and House of Representatives each report submitted to him by the Senior Acquisition Official. The Secretary of Defense shall transmit the report in classified and unclassified forms.

Based on the fact that the production of halons was phased out in January 1994, only recycled/reclaimed products may now be procured. Production class I ozone depleting substances, refrigerants, and solvents will be phased out on January 1, 1996. Report uses a large quantity of Department of Defense resources and provides no useful management tool for Department of Defense or Congress.

Subsection (j)—Kinds of Contracts: Multiyear Contract Certification.—Section 2306(h)(9) of title 10 states that a multiyear contract may not be entered into for any fiscal year for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless each of the following conditions are satisfied: 1) the Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program; and 2) the proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

Currently the Comptroller must provide a justification package with the budget when any multiyear production contracts are requested. Also, multiyear contracts are more difficult to sustain during the current post cold-war defense environment where the major focus now is towards the United States maintaining its technology base capabilities. Outside of the report mentioned from the Comptroller to Congress, all other reports concerning multiyear production contracts should be deleted.

Subsection (k)—Notice to Congress Required for Contracts Performed over Period Exceeding 10 Years.—Section 2352 of title 10 states that the Secretary of a military department shall submit to Congress a notice with respect to a contract of that military department for services for research or development in any case in which—(1) contract is awarded or

modified, and contract is expected, at the time of award or as a result of the modification to be performed over a period exceeding 10 years or (2) the performance of the contract continues for a period exceeding ten years and no other notice has been provided to Congress.

This reporting requirement should be deleted due to the fact there are very few contracts, if any, for services for research and development which extend over a period exceeding 10 years. In addition, internals controls currently exist in regulation (*e.g.* FAR 17.204(e)) that preclude contracts being written for, or being extended to encompass, 10 years or more.

Subsection (l)—Major Defense Acquisition Program Defined.—Section 2430(b) of title 10 defines a ''major defense acquisition program'' as a program of the Department of Defense acquisition program, is not classified, and (1) that is designated by the Secretary of Defense as a major defense acquisition program; or (2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement of more than $1,800,000,000 (based on fiscal year 1990 constant dollars.)

The section states that the Secretary of Defense may adjust the amounts (and the base fiscal year) on the basis of Department of Defense escalation rates. Any adjustment shall be effective after the Secretary transmits a written notification of the adjustment to the Committees on Armed Services on the Senate and House of Representatives.

The adjustments noted above was utilized recently in updating Department of Defense directives which are published in the Federal Register and made available to the public. Annual reports to Congress should be deleted because the information is available to the public.

Subsection (m)—Weapons Development and Procurement Schedules.—Section 2431 of title 10 states that the Secretary of Defense shall submit to Congress each calendar year, at the same time the President submits the budget to Congress under section 1105 of title 31, a written report regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of title 10, and for which any funds for procurement are requested in that budget.

The reporting requirement should be deleted since any necessary information should be included in the Selected Acquisition Reports. No additional reports should be necessary.

Subsection (n)—Selected Acquisition Reports for Certain Programs.—Section 127 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 requires the Secretary of Defense to submit to the Committees on Armed Services of the Senate and House of Representatives a selected acquisition report for each of the following programs: (1) the advanced technology bomber program; (2) the advanced cruise missile program; and (3) the advanced tactical aircraft program.

These reports should be deleted. The programs were terminated by the Secretary of Defense and selected acquisition reports are no longer needed for these programs.

Subsection (o)—Core Logistics Functions Waiver.—Section 2464(b) of title 10 states that the Secretary of Defense may waive the requirement that performance of a logistics activity identified by the Secretary and performance of a function of the Department of Defense, may not be contracted for performance by non-Government personnel under the procedures of OMB Circular A–76. This waiver will be in the case of such logistics activity or function and provide that performance of such activity or function shall be considered for conversion to contractor performance in accordance with OMB circular A–76. Any such waiver shall be made under regulations prescribed by the Secretary of Defense and shall be based on a determination by the Secretary that government performance of the activity or function is no longer required for national defense reasons. Such regulations shall include criteria for determining whether government performance of any such activity or function is no longer required for national defense reasons. A waiver may not take effect until the Secretary of Defense submits a report on the waiver to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.

This reporting requirement is eight years old—is no longer required and should be deleted. Public Law 100–320 and OMB Circular A–76 provides proper safeguards for contract conversions.

Subsection (p)—Improved National Defense Control of Technology Diversions Overseas.—Section 2537 of title 10 requires the Secretary of Defense and the Secretary of Energy to each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding $100,000 in any single year by the Department of Defense or the Department of Energy. The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall submit to Congress, by March 31 of each year, beginning in 1994, a report containing a summary and analysis of the information collected for the year covered by the report. The report shall include an analysis of accumulated foreign ownership of U.S. firms engaged in the development of defense critical technologies.

Based on the fact that there are currently no existing data bases to identify which contractors are foreign controlled and the amount of additional work this requirement will place on contractors and the Department of Defense, recommend termination of the reporting requirement.

Subsection (g)—Real Property Transactions: Reports to Congressional Committees.—Section 2662 of title 10 covers three reporting requirements for the Secretary of Defense. The first reporting requirement requires that the Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committee on Armed Services of the Senate and the House of Representatives: 1) an acquisition of fee title to any real property, if the estimated price is more than $200,000; 2) a lease of any real property to the United States, if the estimated annual rental is more than $200,000; 3) a lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $200,000; 4) a transfer of real property owned by the United States to another federal agency or another military department or to a state, if the estimated value is more than $200,000; 5) a report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $200,000; and 6) any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

The second reporting requirement requires that the Secretary of each military department shall report annually to the Committees on Armed Services of the Senate and the House of Representatives on transactions described above that involve an estimated value of more than the small purchaser threshold under section 2304(g) of title 10 but not more than $200,000.

The third and final reporting requirement for this section requires that no element of Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $200,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of Department of Defense until the expiration of 30 days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the Committees on Armed Services of the Senate and the House of Representatives.

All three of these reporting requirements should be deleted based on the fact these reports are incompatible with efficient management (threshold of $200,000 is .00001% of proposed fiscal year 1995 budget) and unnecessary. This section is not an authority for the transaction so, any action must meet another statute's requirements.

Subsection (r)—Acquisition: Interests in Land When Need Is Urgent.—Section 2672a(b) states that the Secretary of a military department may acquire any interest in land that—(1) he or his designee determines is needed in the interest of national defense—(2) is required to maintain the operational integrity of a military installation; and (3) considerations of urgency do not permit delay necessary to include the required acquisition in an annual military construction authorization act. The Secretary of a military department contemplating action under this section shall provide notice in writing to the Committees on Armed Services of the Senate and House of Representatives at least 30 days in advance of any action being taken.

This reporting requirement should be terminated because of the problems the 30-day delay causes. Actions that were needed in an urgent manner during Operations Desert Shield/Storm were hindered by this reporting requirement.

Subsection (s)—Operations of Department of Defense Overseas Military Facility Investments Recovery Account.—Section 2921 of the National Defense Authorization Act for Fiscal Year 1991 requires the Secretary of Defense not later than January 15 of each year, to submit to the Congressional defense committees a report on the operations of the Department of Defense overseas military facility investment recovery account during the preceding fiscal year and proposed uses of funds in the special account during the next fiscal year. This requirement appears in the Base Closure and Realignment Act of 1990, section 2921(f) and appears as other provisions in the committee print for fiscal year 1994.

Should be included in the quarterly report to Congress on the status of residence value negotiations prepared by the Office of the Under Secretary of Defense (Economic Security). The Comptroller would have collateral action and coordination on the report.

Subsection (t)—Environmental Restoration Requirements at Military Installations To Be Closed.—Section 334(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 allows the Secretary of Defense, as

it relates to environmental restoration requirements at military installations to be closed and in consultation with the Environmental Protection Agency, to extend for a 6-month period of time the cleanup process at a facility scheduled for closure. The Secretary of Defense submits to Congress a notification containing a certification that, to the best of the Secretary's knowledge and belief, the requirements cannot be met with respect to the military installation by the applicable deadline because one of the conditions set forth exists; and a period of 30 calendar days after receipt by Congress of such notice has elapsed.

Status of these installations is contained in the DERP annual report to Congress required by Public Law 103–160. The Environmental Protection Agency consultation is obtained by detailed coordination and teamwork between the Environmental Protection Agency, state regulators, and the Department of Defense in the development of each closing installation's BRAC cleanup plan.

Subsection (u)—Environmental Restoration Costs for Installation To Be Closed Under 1990 Base Closure Law.—Section 2827 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 states that each year, at the same time the President submits to Congress the budget for a fiscal year, the Secretary of Defense shall submit to Congress a report on the funding needed for the fiscal year for which the budget is submitted, and for each of the following four fiscal years, for environmental restoration activities at each military installation separately by fiscal year for each military installation.

This requirement is already contained in the defense annual environmental restoration program report to Congress required by PL 103–160. The reporting requirement should be deleted.

Subsection (v)—Fuel Sources for Heating Systems; Prohibition on Converting Certain Heating Facilities.—Section 2690(b) of title 10 states that the Secretary of the military department concerned shall provide that the primary fuel source to be used in any new heating system constructed on lands under the jurisdiction of the military department is the most cost effective fuel for that heating system over the life cycle of that system. The Secretary of a military department may not convert a heating facility at a United States military installation in Europe from a coal-fired facility to an oil-fired facility, or to any other energy source facility, unless the Secretary—(1) determines that the conversion is required by the government of the country in which the facility is located, or is cost effective over the life cycle of the facility; and (2) submits to Congress notification of the proposed conversion and a period of 30 days has elapsed following the date on which Congress receives the notice.

The language directing the use of the least life cycle cost fuel should be retained. Since conversions from coal will be done only if they meet the least life cycle cost requirement, Congressional notification should not be required.

Subsection (w)—Architectural and Engineering Services and Construction Design.—Section 2807 of title 10 states that within amounts appropriated for military construction and military family housing, the Secretary of the service concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects and family housing projects. Amount available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the Armed Forces of the United States are the primary user. In the case of architectural and engineering services and construction design to be undertaken for which the estimated cost exceeds $300,000, the Secretary concerned shall notify the appropriate Committees of Congress of the scope of the proposed project and the estimated cost of such services not less than 21 days before the initial obligation of fund for such services.

This reporting requirement should be deleted based on the fact that design and project fees have since enactment of this requirement and so the notice is required for too many projects. The notification process delays execution and should be deleted.

Subsection (X)—Construction Projects for Environmental Response Actions.—Section 2810 of title 10 states that the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under the Comprehensive Environmental Response, Compensation, and Liability Act. When a decision is made to carry out a military construction project, the Secretary of Defense shall submit a report, in writing, to the appropriate Committees of Congress on that decision. Each report shall include the justification for the project and the current estimate of the cost of the project; and the justification for carrying out the project.

Environmental cleanup requirements are contained in the annual Department of budget justification material provided with the Department of Defense budget each year. Cleanup requirements are identified in the DERP annual report to Congress required by Public Law 103–160. The reporting requirement should be terminated.

Subsection (y)—Improvements to Family Housing Units.—Section 2825(b)(1) and section 2825(c)(1) of title 10 outlines two reporting requirements. The first requirement states that funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (a) $50,000 multiplied by the area of construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (b) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, $60,000 multiplied by such index. The Secretary concerned may waive the limitations if such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit the improvement will be cost effective, and a period of 21 days elapses after the date on which the Committees on Appropriations of the Senate and of the House of Representatives receive a notice from the Secretary of the proposed waiver together with the economic analysis demonstrating that the improvement will be cost effective.

The second reporting requirement states that the Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—(a) the improvement of the existing housing units has been authorized by law; (b) the Secretary determines that the improvement project is no longer cost-effective after review of post-design or bid cost estimates; (c) the Secretary submits to the committees on Armed Services and Appropriations of the Senate and the House of Representatives a notice containing (i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the Armed Forces in the same pay grade or grades as the members who occupy the existing housing units and (ii) the replacement housing units are intended for members of the Armed Forces in a different pay grade or grades, justification of the need for the replacement housing units based upon the long-term requirements of the Armed Forces in the location concerned.

Both reports should be terminated and replaced by internal reports. The Reporting requirements are unnecessary.

Subsection (z)—Relocation of Military Family Housing Units.—Section 2827 of title 10 states that the Secretary concerned may relocate existing military family housing units from any location where such units exceeds requirements for military family housing to any military installation where there is a shortage. A contract to carry out a relocation of military family housing units may not be awarded until (1) the Secretary concerned notifies Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by the Committees.

The report is unnecessary. It should be terminated and replaced by a Department of Defense report for management if needed for management.

Subsection (aa)—Annual Report to Congress With Respect to Military Construction Activities and Military Family Housing Activities.—Section 2861 of title 10 requires the Secretary of Defense to submit a report to the Appropriate Committees of Congress each year with respect to military construction and military family housing activities. Each report shall be submitted at the same time that the annual request for military construction authorization is submitted for that year. Otherwise, information to be provided in the report shall be provided for the two most recent fiscal years and for the fiscal year for which the budget request is made.

This reporting requirement should be terminated. The data supplied by this report can be furnished by the service concerned on an as needed basis.

Subsection (bb)—Energy Savings at Military Installations.—Section 2865 of title 10 requires the Secretary of Defense to designate an energy performance goal for the Department of Defense for the years 1991 through 2000. To achieve the goal designated, the Secretary of Defense shall develop a comprehensive plan to identify and accomplish energy conservation measures to achieve maximum of energy conservation measures under the plan shall be limited to those with a positive net present value over a period of 10 years or less. The Secretary of Defense shall provide that ⅔ of the portion of the funds appropriated to Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department of Defense, including financial benefits resulting from shared energy savings contracts and financial incentives described for any fiscal year beginning after fiscal year 1990 shall, remain available for obligation through the end of fiscal year following the fiscal year for which the funds were appropriated, with additional authorization or appropriation. The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of Department of Defense as well as the private sector. The Secretary of Defense shall permit and encourage each military department defense agency, and

other instrumentality of Department of Defense to participate in programs conducted by any gas or electric utility for this management of electricity demand or for energy conservation. Not later than, December 31 of each year, the Secretary of Defense shall transmit an annual report to Congress containing a description of the actions taken to carry out energy savings at military installations and the savings realized from such actions during the fiscal year ending in the year in which the report is made.

This reporting requirement has been superseded by the Energy Policy Act of 1992 which established conservation goals for the year 2005 and requires annual agency reports to Congress through the Department of Energy.

Subsection (cc)—Reports on Price and Availability Estimates.—Section 28 of the Arms Export Control Act requires the President to submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, within fifteen days after the end of each calender quarter, a report listing each price and availability estimate provided by the United States Government during such quarter to a foreign country with respect to a possible sale under this chapter of major defense equipment for $7,000,000 or more, of any other defense articles or defense services for $25,000,000 or more, or of any Air-to-Ground or Ground-to-Air missiles, or associated launchers (without regard to the amount of the possible sale).

This report is redundant. The provision for this report requires reporting of potential foreign military sales which may or may not result in actual sales. Sales offers to foreign purchasers as well as actual sales are being reported in a broader scope at the $1 million threshold on a quarterly basis, as required by section 36(a) of the Arms Export Control Act (22 U.S.C. 2765). The reporting requirement should be deleted.

Subsection (dd)—Annual Report on the Status of the Exercise of the Rights and Responsibilities of the United States Under the Panama Canal Treaty of 1977.—Section 3301 of the Panama Canal Act of 1979 requires the President to submit a report annually on the status of the exercise of the rights and responsibilities of the United States under that treaty and includes the following: (1) the condition of the Panama Canal and potential adverse effects on United States shipping and commerce; (2) the effect on canal operations of the military forces under General Noriega; and (3) the commission's evaluation of the effect on canal operations if the Panamanian government continues to withhold its consent to major factors in the United States Senate's ratification of the Panama Canal treaties.

The report has been overtaken by events and should be discontinued. Report requirements are superseded by those of Public Law 103–129.

Subsection (ee)—Monitoring and Research of Ecological Effects of Organotin Antifouling Paint.—Section 7 of the Organotin Antifouling Paint Control of 1988 in regards to estuarine monitoring, states that the Secretary of the Navy, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, shall monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States. This monitoring program shall remain in effect until 10 years after the date of the enactment of this act (enacted June 11, 1988). The Administrator shall submit a report annually to the Speaker of the House of Representatives and to the President of the Senate detailing the results of such a monitoring program for the preceding year. As such, the Secretary shall submit a report annually to the Secretary and to the Governor of each state in which a home port for the Navy is monitored detailing the results of such monitoring in the state. Regarding home port monitoring, the Secretary shall provide for periodic monitoring, not less than quarterly, of waters serving as the home port for any navy vessel coated with an antifouling paint containing organotin to determine the concentration of organotin in the water column, sediments, and organisms of such waters.

The Navy currently has fewer than six ships using organotin coatings. By the end of fiscal year 1994, only two ships with organotin coatings will remain in the fleet. Current Navy policy does not allow use of organotin coatings. By fiscal year 1998 no ships will have organotin coating. With organotin use going to zero, this report should be terminated.

Subsection (ff)—Minority Group Participation in Construction of Tennessee-Tombigbee Waterway Project.—Section 185 of the Water Resources Development Act of 1976 requires the Secretary of the Army, acting through the Chief of Engineers, is directed to make a maximum effort to assure the full participation of members of minority groups, living in the states participating in the Tennessee-Tombigbee Waterway Development Authority, in the construction of the Tennessee-Tombigbee Waterway project, including actions to encourage the use, wherever possible, of minority owned firms. The Chief of Engineers is directed to report on July 1 of each year to the Congress on the implementation of this section, together with recommendations for any legislation that may be needed to assure the fuller and more equitable participation of members of minority groups in this project or others under the direction of the Secretary.

This report should be terminated because this project has been completed.

Subsection (gg)—Presidential Recommendations Concerning Adjustments and Changes in Pay and Allowances.—Section 1008 of title 37 requires the President, after an annual review of the adequacy of the pays and allowances authorized to members of the uniformed services, to submit a report to Congress summarizing the results of such annual review together with any recommendations for adjustments in the rates of pay and allowances.

The pay adequacy report, required on an annual basis by section 1008(a) of title 37, was mandated in an era when there was no regular annual military pay raise. This report would provide information on a number of economic indicators, and when it was determined that an annual pay raise was needed, the raise would be requested. The law on military compensation has changed. Current law (Public Law 101–509) pegs military pay raises to the employment cost index. Pay raises are annual and are based upon changes in private sector wages and salaries for the average worker. The information contained in the pay adequacy report is no longer needed and media coverage of the pay raise system is widespread. The reporting requirement should be deleted.

Subsection (hh)—Adjustments of Compensation.—Section 1009(f) of title 37 outlines a report by the President that is owed with the quadrennial review of military compensation when the President decides not to give equal percentage pay raise to all military members.

This report is due from the quadrennial review group only when there is a reallocation of the basic pay raise. This rarely happens; when it does, it would not appear useful to require that such a fact be reviewed and reported by a quadrennial review group that meets every fourth year. The reporting requirement should be deleted.

Subsection (ii)—Travel and Transportation Allowances: Dependents; Baggage and Household Effects.—Section 406 of title 37 requires the Secretary of Defense to submit to the Committees on Armed Services of the Senate and the House of Representatives a report at the end of each fiscal year stating (1) the number of dependents who during the preceding fiscal year were accompanying members of the Army, Navy, Air Force, and Marine Corps who were stationed outside the United States and were authorized by the Secretary concerned to receive allowances or transportation for dependents; and (2) the number of dependents who during the preceding fiscal year were accompanying members of the Army, Navy, Air Force, and Marine Corps who were stationed outside the United States and were not authorized to receive allowances or transportation.

Neither the Office of the Secretary of Defense nor the services have ever submitted such reports, insofar as we can determine. We are skeptical of the interest this report holds for Congress; therefore, the reporting requirement should be deleted.

Subsection (jj)—Health-Care Sharing Agreements Between Department of Veterans Affairs and Department of Defense.—Section 8111 to title 38 states that for each of fiscal years 1993 through 1996 the Secretary of Defense shall submit a report on opportunities for greater sharing of the health care resources of the Veterans Administration and the Department of Defense which would be beneficial to both veterans and members of the Armed Forces and could result in reduced costs to the government by minimizing duplication and under use of health care resources. The fiscal year 1996 report will also include—(1) an assessment of the effect of agreements entered into on the delivery of health care to eligible veterans, (2) an assessment of the cost savings, if any, associated with provision of services under such agreements to retired members of the Armed Forces dependents of members or former members, and beneficiaries, and (3) any plans for administrative action, and any recommendations for legislation, that the Secretary of Defense considers appropriate.

Public Law 97–174 requires the Secretaries of the Departments of Veterans Affairs and Defense to submit a joint annual report to Congress on the status of health care resources sharing. After careful review of the reporting requirements of Congress, recommend combining this report with the report entitled ''Sharing of Department of Defense Health-Care Resources.'' Combining these reports will avoid redundancy and allow for a succinct review of health care resources sharing activity between the departments.

Subsection (kk)—Water Resources Projects.—Section 221(e) of the Flood Control Act of 1970 requires the Secretary of the Army, acting through the Chief of Engineers, shall maintain a continuing inventory of agreements and the status of their performance, and shall report thereon to Congress. This shall not apply to any project the construction of which was commenced before January 1, 1972, or to the assurances for future demands required by the Water Supply Act of 1958, as amended. Following the date of enactment, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, Chief of Engineers or by a nonfederal interest where such interest will be reimbursed for such construction under the provisions of the Flood Control Act of 1960 or under any other provision of law, shall not be commenced until each nonfederal interest has entered into a written agreement with

the Secretary of the Army/Chief of Engineers to furnish its required cooperation for the project. The agreement may reflect that it does not obligate future state legislation appropriations for such performance and payment when obligating future appropriations would be inconsistent with state constitutional or statutory limitations.

This annual report contains only the total number of agreements executed (according to six types of agreements) and states whether maintenance of any projects has been found to be deficient. However, the inventory requires substantial effort to track agreements, and report relevant data. When this requirement was new Congress was curious as to its effectiveness. However, over 2,000 agreements have been executed since 1972, and Congress has shown no interest in this report. This reporting requirement should be deleted.

Subsection (ll)—Public Health Service Hospitals.—Section 1252 of the Department of Defense Authorization Act of 1984 states that the Secretary of Defense, in consultation with the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, shall submit annually to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives a written report on the result of the studies and projects carried out. The first such report shall be submitted not later than one year after the date of enactment. The last report shall be submitted not later than one year after the completion of all such studies and projects.

This reporting requirement should be terminated. Assessment reports were completed in the 1980s. No such studies and projects are underway or planned.

Subsection (mm)—Review of Contracts.—Section 3(b) of the Act of August 28, 1958 states that all contracts entered into, amended, or modified pursuant to authority contained in this act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. If the clause is omitted, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served, by the omission of the clause, the agency head will submit a report to Congress in writing.

Recommend termination of this report. This report is required when the agency head concerned determines that public interest would best be served by omitting the clause permitting examination of functional and other records as otherwise required for inclusion in contract where relief has been granted.

Subsection (nn)—Special Defense Fund (SDAF) Annual Report.—This provision would repeal section 53 of the Arms Export Control Act (22 U.S.C. 2795b). This is an extensive and time consuming report that provides information readily available through numerous other resources.

Subsection (oo)—Annual Department of Defense Conventional Standoff Weapons Master Plan and Report on Standoff Munitions.—Section 1641 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (10 U.S.C. 2431, note) requires the Department to provide to the Congressional defense committees an annual plan on the development of those standoff weapons that can adequately address the needs of more than one of the Armed Forces.

Much staff work is required to generate the report. We believe that the specific report content is dated and no longer useful to the recipients. The specific report contains an accounting of the Department's standoff weapons programs in the budget, which can be found in other documentation supporting the budget. The programs described in the Conventional Munitions Master Plan, submitted to Congress every other year. Request this reporting requirement be deleted.

Subsection (pp)—Special Defense Acquisition Fund (SDAF) Annual Report.—Due to the decapitalization of the Special Defense Acquisition Fund (SDAF), the requirement for a year end report to the Congress pursuant to section 53 of the Arms Export Control Act is not longer necessary. Subsections (a)(1), (a)(4) are no longer applicable since new procurements under the fund have not been authorized since fiscal year 1993. Reports pursuant to subsection (a)(3) are also unnecessary; while ongoing, transfers of Special Defense Acquisition Fund stocks will decrease over time as they are sold off. Further, such transfers are already notified to the Congress pursuant to other applicable reporting requirements in the Arms Export Control Act.

Section 922. Repeal of prohibition of contracting for firefighting and security guard functions at military facilities

This proposed legislation is the result of cumulative recommendations by our military services to remove this prohibition so the installation commanders and facility managers can improve the efficiency and effectiveness of their fire and security guard functions.

Adoption of this proposal will be implemented within existing Department of Defense appropriations. This proposal will permit the Department to become more efficient in the conduct of business directly supporting the installation operations and maintenance resources. Our firefighting and security guard functions will become more effective and efficient through competition.

It is essential that we get our firefighting and security guard functions in the most effective and efficient posture during the dramatic reductions the Administration desires and approved by the Congress. Getting the best value out of smaller budgets demands better performance, not keeping the status quo. We firmly believe that this legislative proposal will allow our military leaders and facility managers to get the job done with less resources.

The purpose of this section is to repeal section 2465 of title 10, United States Code, and thereby authorize the Department of Defense to enter into contracts for firefighting and security guard functions at military installations and facilities. This repeal restores the ability of the Department of Defense to manage the firefighting and security guard functions in an efficient and effective manner.

The Department of Defense has been prohibited from contracting for firefighting and security guard functions since 1983. This broad prohibition has four limited exceptions:

When the contract is to be performed overseas;

When the contract is to be performed on Government-owned but privately operated installations; and

When the contract (or a renewal of the contract) is for the performance of a function under contract on or before September 24, 1983.

When the contract is with a local government, for a closing base, and not earlier than 180 days before base closing (Pub. L. 103–160, Section 2907).

Prior to 1983, firefighting and security guard functions were successfully competed using the OMB Circular A–76 process.

The prohibition against contracting firefighting and security guard functions prevents the Department of Defense from realizing savings in circumstances where private firms or state and local governments could provide the services for lower cost at equal or better performance. It also prohibits commanders from obtaining contract services for temporary requirements at remote locations or at leased facilities outside military installations.

Section 2465 of title 10, United States Code currently provides that Department of Defense funds may not be spent to enter into contracts for the performance of firefighting and security guard functions at any military installation or facility. The prohibition does not apply to contracts for services at locations outside the United States where armed forces members, otherwise involved in unit readiness, would be performing the function. Nor does it apply to contracts for services at GOCO facilities or for contracts extant on September 24, 1983.

This section was first enacted by the Department of Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661, Section 1222(a), 100 Stat. 3976). The Senate version of that Bill had contained a provision that would extend for one year a freestanding, public law provision setting forth the same prohibition. The Senate language also contained a reporting requirement to review the performance standards and inherently governmental activities within the firefighting function, and an estimate of cost savings associated with such contracting out over a five year period. The Senate Report indicated that firefighting would continue to be exempted until the congressional report indicated that positions could be contracted out in the future (Senate Report No. 99–331, October 8, 1986, p. 526).

The House version of the Bill proposed codification of a prohibition on firefighting functions currently being performed by Department of Defense civilians, with the exception as currently listed. In conference, the House version was adopted. The conferees also agreed to extend the current prohibition on conversion of security guard functions for one additional year, unless the Secretary of Defense determines that such conversion would not adversely affect installation security, safety and readiness (House Report No. 99–1001, October 14, 1986, p. 526).

The importance of repealing section 2465 is underscored by downsizing of the Defense budget and personnel when the infrastructure is not downsizing proportionately. Commanders need all of their tools to manage reducing operating budgets. One tool is competing commercial activity functions such as firefighting and guard service.

The repeal of section 2465 will not automatically result in the loss of civilian firefighters and security guards from the workforce. Reductions in force may occur as a result of competitions performed under chapter 146 of title 10 and OMB Circular A–76.

(a) Existing Procedures. In accordance with existing procedures, the Department provides Congressional notification of the intent to study specific functions, and will provide the results of the competition if the decision is to convert to contract. Separations from Federal Service may result from the development of the most efficient organization, or a contract with the private sector

when the costs are lower than that estimated for in-house performance. The Department fully supports the basic employee protections requiring contractors to offer displaced Government employees the right of first refusal for comparable employment with the contractor.

(b) Benefits of Contracts with local governments. Many installations adjoin or are surrounded by local municipalities which provide firefighting and security guard services to their communities. Some of these municipalities could provide these services to military commanders at little additional cost or at considerable savings. To engage in a cost comparison under these circumstances would waste government and contractor resources needed to prepare estimates for the cost comparison process. Where local governments can provide security guard and firefighter services at reduced costs, the Secretaries of the military departments should be authorized to contract directly with such governments non-competitively without regard to chapter 146 of title 10 and OMB Circular A–76.

OMB Circular A–76 specifically recognizes that firefighting and security guard functions are commercial activities and can be outsourced if a contractor can provide the service effectively and at a lower cost. Defense Firefighting and security guard functions are no different than other commercial activity functions at our installations and facilities from other Federal agencies. The Department is unaware of any rationale for excluding firefighting and security guard functions from the Government-wide process of determining the least expensive method for performing Government work.

Based on past cost comparisons, competition for the Departments firefighting and security guard functions could potentially generate a 240 million dollar savings while retaining in-house about 50 percent of the firefighting and security guard functions competed.

Section 923. Increase in unspecified minor construction threshold from $1.5 million to $3.0 million and the operation and maintenance threshold from $300 thousand to $1 million

This section amends section 2805 of title 10, United States Code, to change the minor construction thresholds to $1,700,000 and $350,000 respectively. The current law limits minor construction projects to less than $300,000 and unspecified minor construction for a single undertaking to an approved cost equal to or less than $1,500,000. There are no provisions for adjustments caused by high costs encountered in non-Continental United States locations.

The primary factor that creates the problem with the existing $300,000 limit is the large variation in area cost factors. The area cost factors for almost half of the installations in the Continental United States is less than 1.0, while area cost factors for Alaskan and other Pacific overseas installations often exceed 2.75, and go as high as 3.0 which means the cost to construct an item in the Pacific theater is up to 3 times that for a similar item in Continental United States. This severely limits the amount and kinds of work that can be accomplished because of the ever present danger of violating the statutory limits.

Section 924. Annual report on National Guard and Reserve component equipment

Subsection (a) of this section amends section 115b(a) of title 10, United States Code, to extend the submission date of the report from February 15 to March 1. The Department has been aggressively pursuing quality improvements in the report within the time constraints for submission that would significantly increase report usefulness. Currently, the Reserve components must submit data quickly after the end of the fiscal year which begins report data detail. For the Fiscal Year 1996 report due to Congress on February 15, 1995, the data cutoff is September 30, 1994. These data, which were collected before the end of October, must reflect actual deliveries, withdrawals and ending balances that occurred during the fiscal year. An additional two weeks for the Reserve components to collect, edit and verify their data would materially increase accuracy. Understanding the requirement by Congress to have this information at the onset of budget hearings, the March 1 report submission date beginning with the next following report will be very helpful to the Department to improve the quality of the report while at the same time support Congressional needs.

Subsection (b) of this section amends section 115b(b) of title 10, United States Code, to delete all references to ''major items of equipment'' and replace with ''combat essential items of equipment.'' The term ''major items'' is a broadly defined term that embraces thousands of items in each Service. The Department interprets Congressional interest to be focused on ''combat essential items'' of equipment which comprises the several hundred most important equipment in each component. Also, the term ''combat essential'' is clearly defined by the Joint Staff, unlike ''major item.''

Subsection (c) of this section provides that the requested changes to section 115b of title 10, United States Code, shall take effect on October 1, 1995.

Section 925. Revision of date for submittal of joint report on scoring of budget outlays

The current submittal date of 15 December does not allow sufficient time for the Office of Management and Budget and the Congressional Budget Office to meet the requirements of the joint report. For the past two years the submittal date has not been met. The published letter, if sent out on 15 December would be incomplete as budget decisions of the President and the Secretary of Defense have not generally been finalized by this date or in sufficient time for the Office of Management and Budget and the Congressional Budget Office to meet this joint reporting requirement. A report of this magnitude shall reflect all of the scoring agreements and disagreements between the Office of Management and Budget and the Congressional Budget Office, and at the present date, this requirement is not being met. Should this reporting date remain in effect, it is likely that multiple scoring letters would be forwarded to Congress for each legislative session in order to properly document the Office of Management and Budget and the Congressional Budget Office outlay scoring approaches. If the submission date is revised to match the submission of the President's budget, then only one joint letter should be necessary to document the outlay scoring that will be used for Department of Defense appropriations.

Section 926. Repeal of annual report to Congress on contractor reimbursement costs of environmental response actions

Section 2706(c) of title 10, United States Code, is an annual report of the Secretary of Defense to the Congress. It is to be provided to the Congress before 30 days after the President submits the budget for the following fiscal year. The data collected for this report are not necessary for properly determining the allowability of environmental response action costs on Government contracts. Furthermore, the Department does not routinely collect data on any other categories of contractor overhead costs. This reporting requirement needlessly is burdensome on both the Department of Defense and defense contractors. It also diverts limited resources for data collection efforts that do not benefit the procurement process.

Title X—General Provisions

Subtitle A—Financial Matters

Section 1001. Appointment and liability of disbursing and certifying officials

This section provides for the designation and appointment of disbursing officials and certifying officials within the Department of Defense (including the military departments and defense agencies and field activities). In addition, this section defines the responsibilities and liabilities of disbursing and certifying officials as well as provide for their relief from liability in appropriate cases.

Section 1002. Due process exemptions for minor adjustments in indebtedness actions

This section amends section 5514(a) of title 5 to insert a new subparagraph (3). The purpose of this amendment is to exempt from the due process provision routine adjustments of pay that are attributable to clerical or administrative errors or delays in the processing of pay documents that have occurred within four pay periods preceding the recoupment and any adjustment that amounts to fifty dollars or less.

The Debt Collection Act of 1982 provides for due process safeguards prior to involuntary salary offset. Under the provisions of the Act, prior to effecting an offset the indebted party has the right to a minimum of a thirty days written notice, the opportunity to inspect and copy Government records relating to the debt, the opportunity to enter into a written repayment agreement, the right to a hearing by an individual who is not under the supervision or control of the head of the agency, and the right to request a waiver of the debt.

These provisions apply to all indebtedness with the exception of underdeduction of Federal benefit premiums for health and life insurance which accumulated over four pay periods or less. Strict adherence to these provisions subjects all indebtedness to full panoply of due process regardless of the cause or amount.

The proposed legislation exempts from full pre-offset due process those debts resulting from routine adjustments of pay attributable to clerical or administrative errors or delays in the processing of pay documents that have occurred within the four pay periods preceding the adjustment and any adjustment of fifty dollars or less. The legislation also proposes that at the time of the adjustment, or as soon thereafter as practical, the individual be provided written notice of the nature and the amount of the adjustment.

The most common occurrence of this type of routine adjustment would be a corrected time and attendance report submitted by an employee's supervisor that changes the amount of a previously reported pay which has already been disbursed to the individual. One example of this type of adjustment would be the downward correction of the number of hours previously reported as overtime. This downward adjustment would decrease entitlement on the part of the individual and result in an indebtedness, usually of a small dollar amount. Providing the full panoply of due process to these types of adjustments, which most likely has already been discussed by the employee and supervisor, is administratively burdensome and the costs often far outweigh the relatively small dollar amounts recovered.

Federal agencies experience a multitude of these adjustments each pay period due to the rapidly changing nature of entitlements,

benefits, allowances, and the remote location of many personnel. For example, a survey of one large Department of Defense consolidated civilian payroll office revealed approximately five hundred such adjustments were being made each pay period. Proving full due process for these routine adjustments are time consuming and costly and could result in the wholesale writeoff of certain debts as not cost effective to collect.

Passage of the legislation would bring adjustment procedures for clerical and administrative errors in line with those of Federal benefit premiums and greatly benefit all Federal agencies by decreasing the overall cost of administering the debt collection process while still providing the individual with full disclosure of the adjustment.

Section 1003. Amendments to Chapter 131, Title 10, United States Code, and to the National Defense Authorization Act of fiscal year 1991

Subsection (a)(1) amends title 10, United States Code, by adding a new section 2219, ''Authority to incur readiness obligations.'' It would authorize the incurability of readiness obligations during the last half of the fiscal year in excess of contract authority and amount available to the Department of Defense. The authority could only be exercised to the extent provided in an appropriations act and would require approval of the Office of Management and Budget. If the Authority were exercised it could only be for essential readiness obligations; it would be limited in amount to not more than 50 percent of the amount provided to the Department for Operation and Maintenance, Budget Category 1; budget proposals for the liquidation of obligations would have to be accompanied by offsetting rescission proposals, unless the President determined that emergency conditions precluded such rescissions; and the Secretary of Defense would have to notify the Congress promptly of any obligations incurred pursuant to the authority provided by section 2219.

Subsection (a)(1) also amends title 10, United States Code, by adding a new section 2220, ''Closed and expired accounts: procedures.'' New section 2220 contains provisions pertaining to subdivided appropriations of the Department. It defines a current account as being any subdivision of such a legally subdivided appropriation and provides that in calculating the amount that may be charged to a current account the 1% limitation on such charges shall be calculated on the basis of the cumulative total of the amounts appropriated in the subdivisions of the subdivided appropriation.

Subsection (b) amends section 1405 of the National Defense Authorization Act for Fiscal Year 1991 to add provisions pertaining to charging of current appropriations when records of the Department indicate that an expired or closed account may have been over expended or over obligated in violation of the Anti-Deficiency Act. Under the current law, payment cannot be made while the apparent violation is being investigated. In those cases where the investigation reveals that there was an accounting error, and that there are sufficient funds in the account, payment of valid vendor invoices would have been held in time during the period of the investigation. This results in numerous contract payments not being paid in a timely manner and can result in interest payments under the Prompt Payment Act.

The amendment provides that an obligation or an adjustment to an obligation in such an account for a fiscal year before fiscal year 1992 may be charged to any current appropriation of the Department available for the same purpose. Obligations could not be charged in such a circumstance unless the Congress were notified by the Secretary of Defense of the facts and circumstances for the negative balance and that an investigation had been initiated into any possible violation of the ''Anti-Deficiency Act'' that might have occurred; if such a violation occurred, that a report of such a violation would be promptly submitted to the Congress as required by law; and, if such a violation did not occur with respect to an account that is expired but not closed, that any charge to a current account would be reversed and the obligation would be charged to the account that would have been charged but for the need to conduct an investigation to determine whether the Anti-Deficiency Act had been violated.

Section 1004. Claims of personnel for personal property damage or loss

Subsection (a) adds a new paragraph (3) to section 3721(b) of title 31. It provides that the Secretary of Defense, or the Secretary of a military department not part of the Department of Defense, may waive the settlement and payment limitation of paragraph (b) for claims by personnel under the jurisdiction of the concerned Secretary for damage or loss of personal property where the concerned Secretary determines that such claims arose from an emergency evacuation or from extraordinary circumstances that warrant such a waiver. It also provides for the promulgation of regulations and grants delegation authority. Subsection (c) provides that the amendments made by this section shall apply with respect to claims arising on or after June 1, 1991.

Subtitle B—Counter-drug Activities

Section 1011. Clarification and amendment of authority for Federal support of drug interdiction

This section amends section 112 of title 32, United States Code to clarify and amend the authority for Federal support of drug interdiction and counterdrug activities of the National Guard.

Subsection (a) reenacts present subsection 112(f) which provides definition for certain terms used in section 112. Subsection (a)(1) defines the activities for which funding may be provided. Specifically, the term ''drug interdiction and counterdrug activities'' is defined as the use of National Guard personnel, while not in Federal service, in any drug interdiction and counterdrug law enforcement activities authorized by state law and requested by the governor. The use of the term ''authorized by law'' is not intended to imply that the activities in question must be explicitly authorized by statutory law. For purposes of this term, the activities may include any such activities that may lawfully be conducted by the National Guard under the law of the state, whether statutory or not. Subsections (2) and (3) reenact the corresponding subsections of subsection 112(f) without change, except for a minor wording change in subsection (3). Subsection (4) provides a new definition of ''counterdrug duty'' as a special type of full-time National Guard duty.

Subsection (b) reenacts present subsection 112(a), expands it to provide explicit statutory authority for the conduct of drug interdiction and counterdrug activities by members of the National Guard in full-time National Guard duty status, and makes additional minor changes for clarity. Specifically present subsection (1)(B) is renumbered to clarify that funds may be provided for operation and maintenance costs of counterdrug activities as well as for pay and allowances of personnel. This section would be the authority for providing funds to a state for reimbursement of state pay and allowances as well as for operation and maintenance (O&M) costs. Present section 112 was initially interpreted by the National Guard Bureau to permit Federal pay and allowances for members of the National Guard used for counterdrug activities in a full-time National Guard duty status under 32 U.S.C. 502(f), but the present language is not entirely clear on this point. The amendment would explicitly provide authority to the Secretary of Defense to authorize full-time National Guard duty, while still allowing a state at its option to request, and the Secretary in his discretion to provide, Federal funds for the payment of state pay and allowances under state active duty, for all or any part of its counterdrug activities funded under this section. Section 502(f) would be the authority for the use of National Guard personnel in full-time National Guard duty status with Federal pay and allowances for drug interdiction and counterdrug activities.

Specific congressional consent would be granted, pursuant to Article I, section 10 of the Constitution, for up to 4,000 members of the National Guard to be on counterdrug duty on orders for more than 180 days, or on orders for more than 180 days for counterdrug activities with state pay and allowances reimbursed under this section, at the end of any fiscal year. The Secretary of Defense would be authorized to increase this end strength by up to 20% at the end of any fiscal year, in order to accommodate unexpected needs. The fluid nature of the counterdrug program necessitates this flexibility. As of June 1994 there were estimated to be 3100 members of the National Guard on orders for counterdrug duty tours in excess of 180 days. It is not anticipated that the cap of 4,000 will be met or exceeded in the next few years, but substantial leeway for rapid response to new requirements should be provided to avoid delays that would result from need for Congressional action. Tight statutory limits without flexibility for unexpected changes, such as exist for the end strengths for the AGR program, would unduly constrain the ability of the States to respond to changes, and would require excessive control of allocations by the Department of Defense to the States of this end strength. Since these personnel would not be on duty for administering the National Guard, they would not be subject to annual end strengths for AGR personnel, or to the grade strengths in sections 12011 and 12012 of title 10.

Section (c) restates present subsections 112(b) and (c) and expands the requirements for plans submitted by governors. Requirements are included for certification by State civil officials that the activities proposed under a state's plan are authorized by and consistent with state law and that any activities in conjunction with federal agencies serve a state law enforcement purpose. These requirements are included to lessen the likelihood of successful legal challenges to funded operations or to arrests or evidence resulting from National Guard support to civil authorities under funding authorized by this section. New subsection (c)(2) includes a technical change to include reference to ordering personnel to counterdrug duty as well as to providing funds to a governor.

Subsection (d) restates present subsection 112(d) without change.

The proposed amendments will not result in an increase in the budget requirements of the Department of Defense.

Section 1012. Authorization to conduct outreach programs to reduce demand for illegal drugs

This section amends chapter 18 of title 10, United States Code, to add a new section 381, which authorizes the Secretary of Defense to establish outreach programs to reduce the demand for illegal drugs by youths. These

programs are to be directed toward youths in general and at-risk youths in particular.

New section 381 derives from section 1045 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 410 note), which authorized the Secretary of Defense to establish a pilot outreach program to reduce the demand for illegal drugs. Pursuant to the section 1045(e), the Secretary of Defense, on November 2, 1994, provided an assessment of the pilot program to the Congress and recommended that the pilot program be replaced by permanent community outreach programs. He noted that in order to continue the outreach programs beyond the end of Fiscal Year 1995, permanent legislative authority would be required.

The new section 381 converts the pilot program into the permanent outreach programs the Secretary of Defense desires. The proposal deletes any reference to pilot programs and to a termination date for the outreach programs. It instead provides only that the Secretary of Defense may establish outreach programs aimed at reducing the demand for illegal drugs among youth.

The programs to be conducted under the new permanent authority are volunteer-based and require limited funding. Consequently, this proposal will allow expansion of the outreach programs, but the programs will be funded at approximately the same level as is currently budgeted. The programs would continue to be included in the Drug Interdiction and Counterdrug Activities central transfer account.

Subtitle C—Other Matters

Section 1021. Authorization of transportation between residence and place of employment

Subsection (a) of this section amends section 1344 of title 31, United States Code, to redesignate the extension period of transportation for a federal employee or officer from four 90 day extensions to a single extension of one year and to delete the requirement for the written agency requirement to include the name of the affected employee or officer. The purpose of this amendment is to authorize the head of a federal agency to extend the effective date of an agency determination for transportation of an employee or officer between residence and place of employment if a clear and present danger, an emergency, or a compelling operational consideration exists.

Currently, four 90-day extensions are required in order to maintain the home-to-work authorization. However, the overseas billets for which this transportation has been authorized by the Secretary of the Navy typically do not change in each 90-day reporting cycle. To extend the authorizations for up to one year rather than the present 90-day cycle would alleviate a redundant reporting requirement. Since the requirements are long-term, an annual review should ensure high-level oversight of home-to-work requirements.

This proposal would also delete the requirement for the written agency determination to include the name of the officer or employee affected and only require the name of the affected position. This would alleviate additional reporting requirements each time the name of the incumbent changed. In addition, this proposal would permit the delegation of the authority to make determinations from the Secretary of Defense to the Heads of Department of Defense Components and from the Secretary of the Military Departments to an officer at or above the level of Vice Chief of each military service. This delegation of authority would maintain control at a high enough level to ensure full compliance while eliminating the administrative delays associated with the signature of the service secretary.

No additional costs or budget requirements are incurred by the Department of Defense from this proposed legislation.

Section 1022. National Guard Civilian Youth Opportunities Program

This section amends section 1091 of the National Defense Authorization Act for Fiscal Year 1993 (32 U.S.C. 501 note) to provide permanent authority for the National Guard Civilian Youth Opportunities Program, presently established as the National Guard Civilian Youth Opportunities Pilot Program. The program is now in its third year of operation and has proven successful in meeting the statutory objectives.

This section also provides authority for the United States Property and Fiscal Officer of each state or other jurisdiction to requisition and lease Government Services Administration vehicles to be furnished to the National Guard for use in support of the Civilian Youth Opportunities Program.

Section 1023. Clarification of authority for requisitioning and lease of general services vehicles for the National Guard

This section clarifies the authority for requisitioning and lease of General Services Administration motor vehicles for use in the training and administration of the National Guard. The United States Property and Fiscal Officer for each state or other jurisdiction would be identified as the requisitioning authority for leasing vehicles to be furnished to the state National Guard. Such use of GSA vehicles has been made for many years. This provision would provide a clear statutory basis for this practice.

Section 1024. Armed Forces Historical Preservation Program

This section amends section 2572(b)(1) of title 10 to clarify which historic preservation programs may be authorized by the service secretaries. The current statute authorizes ''restoration services,'' but is ambiguous regarding the scope of that term. The proposed amendment clarifies the statute to include the full range of modern historic preservation activity by inserting additional specific terms.

''Conservation and preservation'' services include treatment of historic books and documents, metal and wooden artifacts to reduce deterioration. ''Restoration'' is often not possible. Most historic documents were not printed on acid free paper and thus deteriorate with the passage of time. This has been described as ''a silent fire'' threatening historic collections. This proposal contemplates both preservation of items and conservation of their contents by microfilm, photographic and digital means.

''Educational programs'', while inherent in the mission of all preservation activity, includes such programs as videotaped tours to provide access by the handicapped to historic ships and aircraft, publications and cooperative programs with universities and other educational institutions.

''Supplies or conservation equipment, facilities and systems'' includes equipment and supplies for conservation laboratories used to treat documents and artifacts, museums with associated storage facilities and equipment and the H.V.A.C. systems necessary to maintain proper temperature, humidity and air quality conditions essential for preservation of historical collections.

Other provisions of the statute would not be changed by this proposal. These ensure administration of historical collections of the armed forces and will remain under the control of the respective service secretaries and subject to their oversight.

No additional cost or budget requirements are incurred by the Department of Defense from this proposed legislation.

Section 1025. Amendments to education loan repayment programs

This section amends sections 2171, 16301, and 16302 of title 10 to include in the existing loan repayment programs authority to repay loans made by borrowers under the William D. Ford Federal Direct Loan Program as authorized by the Student Loan Reform Act of 1993 and codified at section 1087a *et seq.* of title 20. There are no new costs associated with the enactment of this proposal, as loan repayment under the expanded authority would be made within existing program and budget levels for this incentive.

Title XI—Matters Relating to Allies, Other Nations, and International Organizations

Section 1101. Burdensharing contributions: Accounting

This section amends section 2350j of title 10, United States Code, to authorize the United States to accept burdensharing contributions in the currency of the host nation or in dollars, and to manage it as a separate account, available until expended. Current law requires that the money be ''credited to . . . [and] merged with'' existing Department of Defense appropriations.

There are a number of problems which arise because of the requirement to ''credit'' and ''merge.'' In law, the term ''merged'' usually means that when ''A'' is merged with ''B'', ''A'' loses its separate identity and becomes part of ''B.'' Thus, the ''merging'' of host nation funds into our appropriated funds subjects them to the same limitations on use that govern appropriated funds. However, the practical fact cannot be overlooked that the host nation contribution is not United States taxpayers' money, but rather that of the host nation taxpayers. The source of the host nation contribution constrains the United States' authority to treat those funds in the same way that appropriated funds are treated.

Primarily, the following three limitations on use of appropriated funds create problems with burdensharing contributions:

a. The Competition in Contracting Act. For example, the Republic of Korea provides money on the condition that the money go to Republic of Korea contractors and suppliers, where possible. Under the Competition in Contracting Act, we cannot limit competition to Republic of Korea contractors and suppliers when using appropriated funds; applying the same limitation to contracts funded with burdensharing contributions which have merged with appropriated funds results in an inability to meet the condition placed by the Republic of Korea on the money it contributed.

b. The Foreign Currency Fluctuation Account. For example, the United States accepts contributions from the Republic of Korea in won. Since appropriations are in dollars, not in won, in order to be credited to the Department of Defense appropriation, the won provided by the Republic of Korea must be converted to dollars at the market rate. The dollars then are converted to won for expenditures through a formula which, in the case of won, usually results in less won than if the market rate were used. Similarly, where the contributions from the Republic of Korea are accepted in dollars and then credited to the appropriation, applying the Foreign Currency Fluctuation Account conversion rate when expending those dollars usually results in less won than it took the Republic of Korea to obtain the dollars.

c. The Fiscal Year. For example, the question of what happens when money contributed by the Republic of Korea cannot be expended in the United States fiscal year in which we receive it. This can happen since the Republic of Korea is on a calendar year

fiscal year; their supplemental appropriations bill usually passes in July or August with money coming to the Department of Defense in August or September. If the burdensharing contributions cannot be spent for the purpose for which it was provided, it should not expire along with the appropriation to which it is credited. In addition, unobligated appropriations usually revert to the Treasury; this should not happen to unused contributions from the Republic of Korea.

Establishing a separate account which can accept, manage, and disburse in the currency of the host nation and which does not expire at the end of the United States fiscal year solves these problems. The money is not confused with appropriated funds, thus the Competition in Contracting Act and the Foreign Currency Fluctuation Account do not apply; further since it is available until expended, it does not expire and the question of reversion to the United States Treasury General Fund does not arise.

Section 1102. Relocation of United States Armed Forces in Japan and the Republic of Korea

This section adds a new section 2530k to title 10, United States Code, which establishes authority and procedures for the Secretary of Defense to accept contributions from Japan and the Republic of Korea for the purposes of relocating United States armed forces within the host nation when such relocation is being accomplished at the convenience of the host nation and for the purpose of deploying United States troops to the host nation during a contingency deployment. Currently, relocation expenses are not considered burdensharing.

Congress has made it clear that burdensharing consists of our allies sharing a greater portion of the United States forces overseas basing costs. Most relocations of United States forces are done at the convenience of the host nation and are not for any military purposes. It is clear that Congress does not consider the payment of these relocations driven by the host nation's convenience to be burdensharing. Examples of relocations that would fit this category are the relocation of United States forces from Yongsan to the Osan-Camp Humphreys area in Korea, and the relocation of ammunition storage facilities in Okinawa, Japan, for the expansion of the Zukeyama Dam Water Reservoir.

In addition, by having a separate account to be set up in the host nation currency, Fly America Act problems with the use of Korean Airlines (KAL) in a contingency to transport United States troops to the host nation, in particular to the Republic of Korea, could be avoided. As the host nation currency and separate account would not be United States funds, the Competition in Contracting Act and other restrictions would not apply. Liability issues would still exist, but the payment for Korean Airlines flights could be accomplished in a reasonable manner.

This legislation further outlines the types of expenditures authorized, the method of contributions, and annual reporting requirements to Congress.

Enactment of this provision will not increase the budgetary requirements of the Department of Defense.

Section 1103. Rationalization, standardization and interoperability

This section amends section 515(a)(6) of the Foreign Assistance Act of 1961 to remove references to specific countries and organizations where it states military personnel assigned to Security Assistance Officers may promote rationalization, standardization and interoperability. Section 515(a)(6) of the Foreign Assistance Act currently indicates that the President may assign to members of the United States armed forces in a foreign country the function of ''promoting rationalization, standardization, interoperability, and other defense cooperation measures among members of NATO, and the armed forces of Japan, Australia and New Zealand. . . .'' This initiative seeks removal of specific country references.

In the post-Cold War international environment, it is becoming increasingly likely that the forces we fight alongside may be other than those of NATO, Japan, Australia or New Zealand. However, as specified in Section 515 of the Foreign Assistance Act, these are the only countries with which United States military personnel may promote rationalization, standardization and itneroperability.

Especially in the Central Region, this self-imposed limitation in the Foreign Assistance Act precludes the United States from achieving the greatest possible degree of interoperability with out coalition partners. For example, during deployment for Desert Shield, United States forces derived considerable benefit from the commonality of weapon and support systems possessed by several of the Middle Eastern states.

To the extent that interoperability existed, it facilitated the deployment and employment of a multinational force, many parts of which were mutually supporting due to common equipment and training. This interoperability, which was achieved entirely without legal sanction, has only served to emphasize the need to promote rationalization, standardization and interoperability with all our potential allies.

Section 1104. Cost of leased items which have been destroyed by the lessee

Paragraph (1) of this section amends section 61(a)(3) of the Arms Export Control Act to allow leased items, if destroyed, to be priced at less than replacement value if the United States Government does not plan to replace the item.

Current legislation requires the leasing country to pay ''The replacement cost (less any depreciation in the value) of the articles if the articles are lost or destroyed while leased.'' In circumstances in which the leased item is not going to be replaced by the United States Government, the rationale that justified charging the foreign government the full replacement cost is no longer valid or just. Section 21(a)(1)(A) of the Arms Export Control Act contains a provision regarding the pricing of items to be sold that the United States does not intend to replace: ''The President may sell, if such country agrees to pay, in the case of a defense article not intended to be replaced at the time such an agreement is entered into, not less than the actual value thereof.'' This same rationale should be used in the pricing of lost or destroyed leased items.

Paragraph (2) of this section authorizes the Secretaries of the military departments to use amounts paid by the foreign country or international organization to reimburse for defense articles lost or destroyed to replace the items (if the United States intends to replace the item) or to fund upgrades or modifications of similar systems (if the United States does not intend to replace the item). These funds would otherwise go to Miscellaneous Receipts account of the United States Treasury.

Section 1105. Exchange and returns of defense articles previously transferred pursuant to the Arms Export Control Act

This section authorizes repairable exchange programs and permits the Department of Defense to accept for return defense articles sold previously through Foreign Military Sales. This section provides clear statutory authority in both of these areas, increasing the readiness of both the US and its allies and friends, particularly in contingency situations.

Exchange for Repair. Under the present procedure for the repair of items for Foreign Military Sales customers, the item is received into the repair system and tracked through the repair cycle to ensure that the exact same item is returned to the Foreign Military Sales customer. Both the cost and the time taken to repair the item is increased by the requirement to track the item through the process.

For many components and spare parts, the United States Armed Forces use a different system for their own needs. An unserviceable item is returned for repair and the United States unit immediately receives a serviceable replacement from Department of Defense stocks. When the unserviceable item is repaired it is added to Department of Defense stocks for future use. No tracking of individual items is required.

The proposal would simply allow repairs for Foreign Military Sales customers to follow the same procedure as that used for United States forces, reducing the time customers must wait to receive a serviceable item dramatically (often by months) and increasing the readiness of Foreign Military Sales customers.

Repair and exchange would only be allowed for items for which stock levels are sufficiently high that providing this service would not adversely affect United States readiness. The proposal would not place foreign customers ahead of United States forces—it would simply place them on an equal footing in the use of the repair process.

Incoming items would be inspected to ensure that repair is possible and to prevent abuse of the system by foreign customers. The foreign customer would be charged the same price as the Department of Defense customer plus a Foreign Military Sales administrative surcharge.

It is estimated that at least 20,000–25,000 repair and exchange transactions would be requested each year, with a value in the range of $60–$70 Million. Most of the items repaired would be aircraft and electronic components. The service would be especially useful for allies who cannot afford to maintain high inventory levels.

Return. The return proposal would allow the Department of Defense to accept the return of items previously sold to a foreign government when either the United States has a requirement for the item or when another eligible foreign country or international organization wishes to receive the item pursuant to Foreign Military Sales procedures.

For example, United States stocks of helicopter engine blades for T–64 engines became dangerously low during Desert Shield/Desert Storm. The Navy located stocks of these blades which had previously been sold to Germany and which Germany offered to return to the United States. In this instance the United States bought these blades under a slower authority (NATO Mutual Logistics Support Agreement). This authority would have allowed this transaction to occur quickly.

This proposal would not circumvent FAR and DFAR requirements. Materiel previously sold through Foreign Military Sales has already been subjected to these requirements in the process of the original Foreign Military Sales sale. If the materiel had to be bought back through the FAR process, it would be subjected twice to these requirements.

Section 1106. Foreign disaster assistance

A requirement for the President to notify Congress of all foreign disaster assistance financed with Department of Defense funds was added this year to title 10 by section 1412 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2912). The intent of the Senate, who added the requirement, was concern over costly and long duration foreign operations. The Senate cited as examples Bangladesh, the Philippines, northern Iraq, Somalia, and the former Yugoslavia.

Preparation of these reports is a burden and a diversion for Department of Defense personnel when they are expeditiously developing and executing disaster relief missions.

This proposal significantly reduces the burden of reporting by requiring notification only on foreign disaster missions that are not natural disasters and are expected to cost $10 million or more or last longer than three (3) months. Congressional intent, as expressed in Senate Report 103–282, page 221, is preserved.

Section 1107. Humanitarian assistance

This reporting requirement was enacted by section 304 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2361).

In its current form, reports are required twice a year on the use of Humanitarian Assistance (HA) funds. Information is required on total funds obligated, the number of missions and descriptions of cargo, their recipient, and cost. Reports are required sixty days following enactment of a Department of Defense Authorization Act and again on June first of each year.

This initiative reduces reporting to once a year consistent with the principle of reducing the burden of reporting to a level consistent with efficient management by Department of Defense and oversight by Congress. The annual report would accompany the submission of other justification material supporting the annual President's budget request.

To further reduce the burden of reporting, the contents of the report would be reduced by eliminating detailed reporting of the current and acquisition value of cargo delivered by mission. However, the total cost for distributing and transporting the cargo as charged against humanitarian assistance funds would continue to be reported. Further, since ''flights'' are not the only mechanism for transporting relief the language is revised to refer to ''transportation missions''. This recognizes the use of land and sea transportation in addition to air deliveries.

Section 1108. Humanitarian assistance program for clearing landmines

Permanent title 10 authorization language is needed for the Department of Defense humanitarian demining program with extended authorities to permit more efficient application of the program to world-wide needs than currently allowed under section 1413 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2913).

The provisions of this section extend the use of demining funds to the rudimentary construction and repair of facilities supporting the program. This is identical to the existing authority under section 401 of title 10 for the Humanitarian and Civic Assistance program.

The language permits the United Nations and other international organizations to participate in the program.

Lastly, expanded language identifies the uses of funds for cooperative agreements and grants, and permits relevant equipment and technology to be sold or donated to all program participants.

Section 1109. Reimbursements, credits, and limited payments for assessments relating to international peacekeeping and peace enforcement activities

This section amends title 10 by adding a new section 406 which establishes the International Peacekeeping and Peace Enforcement Activities Account and authorizes the use of Department of Defense funds to pay for a share of assessments, the furnishing of personnel, supplies, services, and equipment in support of United Nations peace operations, and the reimbursement to the appropriate department of the Department of Defense for any incremental costs incurred in the provision of such assistance.

The provisions of this section authorizing the use of Department of Defense funds to pay for a share of assessments are designed to ensure that there is adequate funding for United Nations peace operations in which United States combat forces participate. The authority to use Department of Defense funds to pay United Nations peacekeeping assessments applies only to Chapter VI and Chapter VII United Nations peace operations in which United States combat forces participate. The Department of State would continue to have financial responsibility for all other peace operations.

Section 1110. Extension and amendment of counterproliferation authorities

This section would extend through fiscal year 1996 the International Nonproliferation Initiative contained in section 1505 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2567; 22 U.S.C. 5859a), as amended by sections 1182(c)(5) and 1602 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1772 & 1843) and by sections 1070(c)(1) and 1501 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2857 & 2914).

In addition, this section would authorize the Department to provide assistance and support in the destruction and elimination of weapons of mass destruction outside the states of the former Soviet Union. Activities of this nature demonstrate United States willingness to assist other nations to dismantle weapons of mass destruction. As new arms control or assistance agreements come into effect, such efforts could increase, especially in the chemical, biological, and ballistic missile weapons arena.

Section 1111. Cooperative research and development agreements with NATO organizations—technical and conforming amendments

This is a technical and conforming amendment to bring section 2350b of title 10 into line with section 2350a of such title. Section 2350a was amended by section 1301 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2888) in a similar manner as the instant proposal. The following section, section 2350b, requires a similar amendment for consistency of treatment.

TITLE XII—ACQUISITION REFORM

Section 1201. Waivers from cancellation of funds

This proposal would provide that, notwithstanding section 1552(a) of title 31, United States Code, funds for satellite incentive fee and shipbuilding contracts shall remain available for obligation and expenditure until the purpose intended to be achieved by the contract is achieved.

The Department believes that these funds, when properly obligated on a contract should remain available for the purpose originally intended, *i.e.*, making payments for the performance of the contract to which they were obligated. Clearly such funds should not be diverted for any new work or other purpose unrelated to performance of that contract. However, with these unique programs, the funds should remain available to pay for completion of uncompleted work, contract price adjustments, close-out costs, settlement of claims, or any other action arising from performance of the work for which the funds were originally obligated.

Section 1202. Amendment to conform procurement notice posting thresholds

This section would conform the defense procurement notice posting threshold (currently $5,000) to the same threshold as exists for the civilian agencies (currently $10,000). There is no logical reason for applying unique notification rules to DOD rather than setting a government-wide standard. This proposal would correct this anomaly.

Section 1203. Competitiveness of United States companies

Section 2761(e) of title 22, United States Code, currently provides for recoupment of non-recurring research and development charges for products sold through the foreign military sales program. Repeal of the provision in 22 U.S.C. 2761(e) concerning recoupment of non-recurring research and development charges would increase United States competitiveness in global markets and enhance the national security and industrial base. This proposal will assist efforts by defense oriented companies to shift toward commercial activities by eliminating a major barrier to the free flow of technology between the commercial and defense sectors of the United States economy. The proposal will also enhance the ability of American firms to compete for billions of dollars of business that they might otherwise lose.

Section 1204. Inapplicability of prohibition on gratuities

This section would amend 2207 of title 10 to provide an exemption for contracts under this simplified acquisition threshold and for contracts for commercial items. This would eliminate a contract clause that is inappropriate for simplified purchases and for commercial item contracts.

Section 1205. Prompt resolution of audit recommendations

This section would delete a requirement that audit recommendations be acted upon within 6 months, as this requirement currently exists in regulation. The requirement can be maintained in regulation without a statutory mandate. Retaining this requirement in statute is excessive oversight and removes managerial flexibility from the Department of Defense.

Section 1206. Repeal of domestic source limitation

This section would repeal 10 U.S.C. 4542, which currently sets forth limits on the technical data packages that may be provided to defense contractors for certain armament production. Only the Secretary of Defense should determine the appropriate balancing of industrial base, technology transfer and defense trade policies. Statutory constraints on that authority hinder effective management of these sometimes-conflicting policies, especially in a time of drawdown.

Section 1207. Extraordinary contractual relief

This proposal would repeal a restriction on the use of extraordinary contractual relief under Public Law 85–804, limiting its applicability to wartime or national emergency. Extraordinary contractual relief should be available during peacetime as well as during wartime or national emergencies. Relief

under Public Law 85–804 is used for many purposes unrelated to the existence of national emergency, *e.g.*, indemnification and recognition of contingent liability. This limitation has not yet had any direct impact because the United States has been under a state of national emergency since the Korean War. However, should this condition be lifted, this authority would immediately be unavailable.

Section 1208. Disposition of naval vessels

This section proposes a technical correction to section 7306(a)(1) of title 10, U.S. Code. The National Defense Authorization Act for Fiscal Year 1994 consolidated several statutes dealing with this subject into a single, consolidated statute. However, the drafting of the consolidated provision did not exactly duplicate the previously existing coverage. Some corrections to reconcile the consolidated provision with previously existing law were made by FASTA, but this correction was omitted. If this proposal is adopted, the consolidated statute will then be identical in scope to the previously existing law, and permit the transfer of vessels in United States territories as well as states.

Section 1209. Test program for negotiation of comprehensive subcontracting plans

This section would amend the Test Program for Negotiation of Comprehensive Subcontracting Plans (Section 834 of Public Law No. 101–189, 15 U.S.C. 637 note). Current statutory language limits purchasing activities allowed to participate in the test to one activity in each of the Military Departments and Defense Agencies. Subsection (a) proposes to remove this limitation. This deletion will enhance the underlying purpose of the law, which is to improve business opportunities for small and disadvantaged businesses as well as small businesses, and to require that efforts be made to include in the program contracting activities purchasing a broad range of the supplies and services acquired by the Department of Defense.

This subsection also proposes a technical correction to a provision of this same law. The proposal would require that contractors' ability to participate in the test to be based on the contracts that they received during the preceding fiscal year rather than the fiscal year ending September 30, 1989, as the current law states. This amendment also reduces the number of contracts and aggregate dollar value of those contracts that are required to establish a condition for a contractor's participation in the test from five contracts worth $25 million to three contracts worth $5 million.

Finally, the proposal would delete paragraph (g) of this public law in its entirety and redesignate paragraph (h) as paragraph (g). Paragraph (g) currently limits participation in the program after fiscal year 1994 to those firms that had participated in the program before October 1, 1993.

All of these amendments would greatly facilitate more meaningful tests. The test as currently established does not result in participation of sufficient number of firms to provide a valid statistical sample of the contractors doing business with the Department of Defense and does not cover a representative sample of the supplies and services that the Department acquires.

For example, the restriction placed upon the conducting of the test, i.e., allowing only one contracting activity in each of the military departments and defense agencies to participate; and limiting contractor participants to those receiving at least five contracts and being paid at least $25 million, has severely limited both the number of contractors that are involved and the types of supplies and services being acquired. As a result of this limitation, of the eight contractors participating in the program, six are in the aerospace industry. One of the remaining firms is involved in shipbuilding and the other is an electronics firm. The participating contractors represent the very largest prime contractors and are involved in the development and manufacture of major weapons systems. Generally, the larger the prime contractor the more likely that there is a need for subcontractors that are manufacturers in the high technology product area. High technology manufacturing is where the least amount of capability exists in the small and small disadvantaged business community. As a result, neither the number of firms involved in the test nor the supplies and services that they are providing is sufficiently representative of the Department's acquisition programs. Therefore, it is not possible to apply the results of the test to date as representative of what could be achieved by all of the 1863 defense prime contractors participating the Department of Defense subcontracting program.

Section 1210. Civil Reserve Air Fleet

This proposal would modify authority newly-enacted by FASTA that permits the DOD to contract with Civil Reserve Air Fleet (CRAF) contractors to grant them limited commercial use of CONUS military airfields. Currently, however, the authority to permit limited commercial use is limited to times of full CRAF activation. Deletion of the word ''full'' before ''CRAF'' as proposed will permit use of this valuable authority during a military operation requiring less than full CRAF activation. This flexibility is important because of the need to mobilize civil and reserve fleets in advance of declaration of war.

Section 1211. Eighteen-month shipbuilding claims

Under section 2403 of title 10 as amended by the FASTA, contractors may bring shipbuilding claims within 6 years of the accrual of the claim, for contracts entered into after the date of enactment of the FASTA. For contracts entered into before date of enactment, the prior, 18 month claims limit period appeals. Under a recent decision of the Federal Circuit Court of Appeals, the statute's limitations period was interpreted to apply only to the secretaries of the military departments, not to the Boards of Contract Appeals or courts. This technical amendment would clarify that the 18 month limit on shipbuilding claims, to the extent that it still exists for contracts entered into before enactment of the Federal Acquisition Streamlining Act, applies to the Boards of Contract Appeals and courts as well as the secretaries of the military departments.

Section 1212. Naval salvage facilities

This proposal would consolidate all statutes pertaining to naval salvage facilities' contracting currently in chapter 637 of title 10. The consolidate includes a deletion of an outdated limit on salvage appropriations. This consolidation would contribute to the streamlining of the acquisition laws.

Section 1213. Factories and arsenals: Manufacture at

This section would consolidate and amend two service specific statutes dealing with manufacture of supplies at inhouse, United States owned arsenals and factories. Currently, the Army authority is mandatory—it must produce supplies inhouse unless the requirement is waived. Conversely, the Air Force authority is discretionary—it may produce supplies inhouse. The consolidation would establish one authority Department of Defense-wide that is clearly discretionary. The discretion to make judgments about inhouse production is critical in this era of downsizing.

Section 1214. Bar on documenting economic impact

This section would repeal a bar on the use of government contract funds to demonstrate the economic impact of a government contract. It is inappropriate to maintain this level of oversight in statute. It is also unnecessary because this bar is currently maintained in regulation.

Section 1215. Fees for samples, drawings

This section would amend a newly-enacted statute, §2539b. This statute was intended to provide, among other things, authority for private sector use of Department of Defense testing facilities. However, commercial use of a certain subset of those test facilities, Major Range Test Facility Bases (MRTFBs), is also authorized by another newly enacted statute, §2681. Both statutes were enacted by the National Defense Authorization Act for FY 1994. However, the two statutes prescribe different rules on government fees for the use of such test facilities. Section 2539b provides that the government can charge only direct costs, thus precluding the government from charging for indirect costs. Conversely, §2681 permits charges for indirect costs as well. This amendment would resolve that discrepancy by requiring, under §2539b, at least the charge of direct costs, but not prohibiting the charge of indirect costs when appropriate.

Section 1216. Contracts: Delegations

This section would repeal 10 U.S.C. 2356. That statute provides authority for a secretary of a military department to delegate specified research contracting authorities to listed officials. It is not considered necessary because it duplicates a secretary's inherent authority to delegate. In addition, the statute is not currently relied upon by any pertinent Department of Defense components.

The proposal would eliminate unnecessary and duplicative authorities, thereby increasing efficiency and streamlining the acquisition process.

Section 1217. Defense acquisition pilot programs

This section would amplify the statutory waivers available to the defense acquisition pilot programs that were authorized by the FASTA.

Section 1218. Testing

Section 2366 of title 10 provides for survivability and lethality testing of major systems with an Office of the Secretary of Defense-level report to Congress. Survivability testing must be on the full-up system as configured for combat unless the Secretary of Defense waives the requirement for full-up testing. This provision would change the requirement to realistic vulnerability or lethality testing rather than require costly testing of actual products. The provision makes other changes to ensure the integrity of the testing process by appropriate contract sources, when necessary.

Section 1219. Coordination and communication of Defense research activities

Currently this section establishes a requirement for the Secretary of Defense to promote, monitor, and evaluate programs for the communication and exchange of technological data among Department of Defense Components. It also requires that technological issues be considered and made part of the record at Milestone O, I, and II decisions.

The proposed technical change to this section deletes the specific references to, and definitions of, the Milestone decisions and substitutes references to acquisition program decisions. This change retains the intent of the statute, but does not tie accomplishment of the requirements to events which may change over time as the acquisition process changes or may be tailored out

of a particular program's acquisition approach. Rather, it provides for the requirement to be satisfied at all decision reviews for the program, whether or not they are milestone decisions.

Section 1220. Undefinitized contract actions

Section 2326(b)(4) of title 10, United States Code, permits the head of an agency to waive the limits on the use of undefinitized contract actions if such waiver is necessary to support contingency operations. This amendment would exclude peacekeeping, humanitarian assistance and disaster relief operations from the scope of these limits on the use of undefinitized contract actions. This amendment is needed to provide the Department's contracting personnel with maximum flexibility during these specialized operations. Contracting personnel supporting these types of operations should be granted the same tools as contracting personnel supporting contingency operations. For example, during disaster relief operations, the Department often needs authority to purchase and take delivery of relief supplies prior to final agreement on price.

Section 1221. Independent cost estimates

This amendment would permit military departments or agencies, independent of their respective Acquisition Executives, to prepare independent cost estimates for acquisition category I C programs (component-overseen major defense acquisition programs). These offices are the Army Directorate of Cost Analysis, Naval Center for Cost Analysis, or Air Force Office of Cost and Economics, all three of which report to the Assistant Secretary for Financial Management in their respective departments. The proposed language would align the responsibility for independent cost estimating with the level of the decision authority.

Section 1222. Unit cost reports

This section would amend the unit cost report requirement at 10 U.S.C. 2433 to (1) delete the reference to ''current fiscal year,'' (2) restore a former provision to report to the appropriate service acquisition executive further unit cost increases of 5 percent or more, and (3) replace the phrase ''contract as of the time the contract was made'' with ''contract cost baseline.''

The current law, as amended by the Federal Acquisition Streamlining Act of 1994, contains reference to ''current fiscal year.'' Use of this phrase will result in the second reporting of the *same* program breach when a new acquisition program baseline is not approved prior to the end of the fiscal year in which the unit cost breach occurred. The references to ''current fiscal year'' were appropriate when the President's budget was used as the unit cost reporting baseline. But it is not appropriate for the acquisition program baseline, which is not automatically revised each new fiscal year. The deletion of these references will eliminate the duplicative reporting of unit cost breaches.

In addition, the newly amended statute does not now require reporting of subsequent increases in unit cost after a unit cost breach occurs and before a new acquisition baseline is approved. Therefore, there is no motivation to have a new acquisition program baseline approved in a timely manner after a unit cost breach. The former provision to report to the appropriate service acquisition executive further unit cost increases of 5 percent or more is thus proposed to be restored, as amended for the use of the acquisition program baseline as the unit cost reporting baseline.

This revision would also replace ''contract as of the time the contract was made'' with ''contract cost baseline.'' This amendment would provide the Department with the flexibility to define the basis for determining contract cost breaches.

Section 1223. Repeal of spare parts quality control

This proposal would repeal 10 U.S.C. 2383, requiring contractors providing critical aircraft or ship spare parts to provide parts that meet specified quality requirements (using quality requirements for original parts unless written determination to the contrary).

DOD must move away from the use of government unique specs and standards that are outdated and do not recognize modern industrial manufacturing methods. Failure to do this may result in the procurement of higher-priced, inferior quality goods. Specifically, qualifications and quality standards should be a matter for engineering and technical judgment based on current needs, technology and experience with the use of the particular item.

Section 1224. Patent and copyright cases

This section proposes a technical amendment to update the statutory terminology. It would amend 10 U.S.C. 2386 to substitute ''designs, processes, technical data and computer software'' for ''designs, processes and manufacturing data'' as ''manufacturing data'' is an outmoded phrase.

Section 1225. Defense Acquisition Workforce Act improvements

This proposal, at subsection (a), would amend section 663 of title 10 to authorize the Secretary of Defense to exclude from the mandatory joint duty requirement for military members of the Acquisition Corps, as defined in section 1731 of title 10, who have graduated from the Senior Acquisition Course at the Industrial College of the Armed Forces. This exemption is permitted if they are assigned to Critical Acquisition Positions, as defined in section 1733 of title 10, upon graduation.

This amendment will allow the Acquisition Corps to exploit the talents of these high-potential officers by assigning them to billets in the correct career field where they can employ the skills developed through attendance at the Senior Acquisition Course. Section 1205(a)(4) of the Defense Acquisition Workforce Improvement Act (Public Law 101–510) directed the Department to create a Senior Acquisition Course as a substitute for and equivalent to, existing senior professional military education school courses, specifically designed for personnel serving in critical acquisition positions. The Industrial College of the Armed Forces (ICAF) was selected as the location for the Senior Acquisition Course because a significant portion of the existing curriculum addressed subjects essential to any advanced program of study in acquisition.

Consequently, the Senior Acquisition Course is composed of the standard ICAF curriculum, augmented by specifically tailored electives, writing projects and additional classes for acquisition students. While the use of ICAF to present the Senior Acquisition Course offered significant benefits derived from the existing curriculum, it also invoked the joint duty assignment requirement established for officers graduating from a Joint Professional Military Education School, as provided in section 663(2)(A) of title 10. This section requires that ''. . . a high proportion (which shall be greater than 50 percent) of the officers graduating from a joint professional military education school who do not have a joint specialty shall receive assignments to a joint duty assignment as their next duty assignment or, to the extent authorized in subparagraph (B), as their second duty assignment after such graduation.''

The problem, however, is that there are generally more acquisition graduates than expected joint billets at the appropriate grade levels. This career field mismatch leaves the Department with three unsatisfactory alternatives: (1) assign officers into acquisition career fields in which they are not certified; (2) assign them to joint billets that do not require acquisition expertise; or (3) require line officers to have an increased requirement disproportionately imposed on them to account for the acquisition personnel not going into joint assignments. The first alternative conflicts with the statutory requirement (section 1723(a)) to apply qualification standards to all acquisition positions. The second alternative is counter to the basic concept for establishing a Senior Acquisition Course, is counter to the concept that the Acquisition Corps officers should serve in critical acquisition positions, and could disadvantage officers competing for promotion. Finally, the third alternative is not feasible due to the existing claims for line officers.

Subsection (b) of this proposal would repeal subsection (a) of §1734 of title 10 and redesignate the remaining sections.

Currently, section 1734(a) of title 10, United States Code, requires individuals assigned to critical acquisition positions (CAP) to serve in that position for a period of time not less than three years. Additionally, it establishes a requirement for individuals entering a CAP to sign a written agreement to remain in that position for at least three years. While these provisions were envisioned to promote stability and professionalism within the acquisition workforce, they are having a direct and detrimental impact on civilian professional development and the implementation of innovative management initiatives to reengineer the acquisition process.

Specifically, the tenure requirement, with its associated written agreement, adversely affects the acquisition workforce in five areas: (1) civilian promotions are tied directly to changing jobs. Any barrier, such as a three year tenure requirement, serves only to inhibit and discourage individuals from advancement; (2) current management initiatives seek to employ integrated product/process development teams. This concept has been endorsed as an excellent management initiative; however, it requires moving people into different jobs and positions. The process of establishing these teams frequently results in team members moving into positions prior to meeting the three year tenure mark in their former position; (3) cross-functional expertise is another attribute desirable in today's acquisition workforce. Yet in order to develop the requisite skills, individuals must be assigned to a variety of positions to develop the background experience and exposure to multiple functional areas. A three year tenure requirement in each position inhibits the breadth of the developmental events that someone can experience; (4) the realities of today's environment in terms of force reductions, realignments and BRAC all place our acquisition professionals in tenuous positions. The tenure agreement obligates the acquisition professional to remain in Federal service for at least three years. Enforcement of this agreement deprives the individual of taking advantage of the early out and early retirement incentives that accompany the on-going force reductions. Further, with the uncertainties associated with the BRAC process and subsequent relocation of major organizations (*e.g.*, NAVAIR with approximately 4,700 jobs) people are reluctant to sign tenure agreements they probably would not honor because they do not want to move out of their current geographic region; and (5) finally, if rigidly enforced, the tenure

agreements could create the situation where critical acquisition positions are filled by the most available, not the best qualified person, because the best qualified individual for the job has not completed three years in their current position.

The Department is provided the authority to waive these provisions. However, waivers are viewed negatively, especially given the annual GAO audit of all waivers executed under the provisions of Chapter 87. Waivers should be used for exceptional situations, but the requirements of this section generate waivers as a routine and normal event.

Today's acquisition workforce is significantly different from when this provision was enacted. We now have a cadre of trained and experienced acquisition professionals. This provision serves only to constrain viable career paths that contribute to developing cross-functional expertise through career broadening assignments. It stifles the opportunity to assign the best qualified people to critical positions and to employ innovative management practices. Consequently, this provision is counterproductive to good management practices and should be repealed.

Section 1226. Technical amendment to authority to procure for experimental or test purposes

This section would amend a newly codified authority, at 10 U.S.C. 2373, that currently permits a narrow category of noncompetitive procurement of limited quantities for test or experimental purposes, to conform the new codified section to the full scope of the prior, existing service specific statutes.

Section 1227. Repeal of certain depot level maintenance provisions

Section 2466 provides that not more than 40 percent of the funds made available in a Fiscal Year to a military department or a Defense Agency, for depot-level maintenance and repair workload may be used to contract for performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Repeal of Section 2466 will provide the Department of Defense and the military departments the needed flexibility to accomplish more than 40 percent of their depot maintenance workload by non-Federal Government employees when needed to achieve the best balance between the public and private sectors of the Defense industrial base. The repeal of Section 2466 will not increase the budgetary requirements of the Department of Defense.

Section 2469 prohibits the Secretary of Defense or the Secretary of a Military Department from changing the performance of a depot-level maintenance workload that has value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense unless, prior to any such change, the Secretary uses competitive procedures to make the change. The Department has suspended cost competitions for depot maintenance workloads because of problems with the data and cost accounting systems of the Department. Repeal of Section 2469 will permit the Department of Defense and the military departments to shift workloads from one depot to another or to private industry as required to resize the depot maintenance infrastructure to support a smaller force structure. The repeal of section 2469 will not increase the budgetary requirements of the Department of Defense.

By Mr. THURMOND (for himself and Mr. NUNN) (by request):

S. 728. A bill to authorize certain construction at military installations for fiscal year 1996, and for other purposes; to the Committee on Armed Services.

THE MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. THURMOND. Mr. President, by request, for myself and the senior Senator from Georgia [Mr. NUNN], I introduce, for appropriate reference, a bill to authorize certain construction at military installations for fiscal year 1996 and for other purposes.

I ask unanimous consent that a letter of transmittal requesting consideration of the legislation and a section-by-section analysis explaining its purpose be printed in the RECORD.

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

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, April 24, 1995.

Hon. ALBERT GORE, Jr.,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: The Department of Defense proposes the following draft of legislation that would authorize certain construction at military installations for Fiscal Year 1996, and for other purposes. The bill would be called the ''Military Construction Authorization Act for Fiscal Year 1996.'' This proposal is necessary to execute the President's Fiscal Year 1996 budget plan. It is drafted to be a principal division of the departmental authorization legislation.

The Office of Management and Budget advises that there is no objection to the presentation of this proposal to Congress, and that its enactment would be in accord with the program of the President.

This proposal would authorize appropriations in Fiscal Year 1996 for new construction and family housing support for the Active Forces, Defense Agencies, NATO Infrastructure Program, and Guard and Reserve Forces. The proposal establishes the effective dates for the program. The proposal includes construction projects resulting from base realignment and closure actions. Additionally, the Fiscal Year 1996 draft legislation includes General Provisions.

Enactment of this legislation is of great importance to the Department of Defense and the Department urges its favorable consideration.

Sincerely,

JUDITH A. MILLER.

DEPARTMENT OF DEFENSE—FACILITY PROGRAMS LEGISLATIVE SECTIONAL ANALYSIS

SALE AND REPLACEMENT OF EXCESS AND/OR DETERIORATED MILITARY FAMILY HOUSING (SEC. 2801)

This provision authorizes the Secretaries of the Military Departments to sell, at fair market value, military family housing at non-base closure United States or U.S. Overseas installations which has deteriorated beyond economical repair or is no longer required, along with the parcel of land on which the structures are located. The provision also authorizes the Secretary concerned to use the proceeds from the sale of the property to replace or revitalize housing at the existing installation or at another installation with a continuing requirement.

As a result of planned force structure reductions and base closures, the Services are divesting themselves of military family housing deteriorated beyond economical repair or no longer required. Currently there is no statutory authority available to enable the proceeds from the sale of these properties at non-base closure installations to be used specifically for the replacement of revitalization of family housing. The proceeds from the disposal of excess military family housing at non-base closure locations must be deposited in a special account in the Treasury of the United States to be used by DoD for maintenance and repair and for environmental restoration (40 U.S.C. 485(h)). Allowing the military departments to sell and reinvest the proceeds will accelerate the revitalization of military family housing and reduce the requirement for appropriated funds.

WAIVER OF MAXIMUM AMOUNTS FOR FAMILY HOUSING FOREIGN LEASE (SEC. 2802)

Notwithstanding the overseas drawdown, the Department's requirements for overseas high cost leases continues to grow. This increase is attributable to the growth of the Department's presence in overseas cities rather than at U.S. installations or enclaves, particularly in extremely high-cost Asian cities, such as Singapore. In Singapore, the rents range from $25,000 to $44,000 per year, and those rental costs are below market rates, in accordance with an agreement with the government of Singapore. Without the increase in the number of high cost leases allowed to the Department, military members assigned to duties that require them to live on the economy in high cost areas will have to pay the difference out of their own pocket. In some instances, the cost difference will be prohibitive.

INCREASE IN SQUARE FOOTAGE WHEN ACQUIRING EXISTING FAMILY HOUSING (SEC. 2803)

This modification to 10 U.S.C. 2826(e) would make permanent the authority to waive statutory square foot limits established in Fiscal Year 1992. This modification would permit the military departments, in situations where family housing construction has been authorized, to continue to acquire rather than construct existing family housing units that are larger than the current statutory limits, provided the purchase price is within the amount authorized for construction.

EXPANSION OF AUTHORITY FOR LIMITED PARTNERSHIPS (SEC. 2804)

Section 2837 of Title 10, United States Code provides the Department Of the Navy with authority to invest in limited partnerships for developing privately owned family housing near installation if there is a shortage of suitable housing. The rationale that supported the provision for the Navy applies equally as well to the Army and Air Force installations in areas with reasonably large private sector housing markets. The additional housing units this authority would generate would have minimal effect on total local market assets, and if military requirements were reduced in the future, the units would be readily absorbed into the private sector.

MILITARY CONSTRUCTION COST NOTIFICATION REPORTS (SEC. 2805)

The proposed change would modify existing subsection (d) by dropping the requirement for notification to Congress on cost increases which exceed the limitations of subsection (a) when the increase is to settle a court ordered contract claim. This requirement is considered an unnecessary administrative burden as these settlements are preexisting legal liabilities, their payment is not discretionary to the military departments.

CLARIFICATION OF UNSPECIFIED MINOR CONSTRUCTION AUTHORITY (SEC. 2806)

This clarification provision will make the definition of a minor military construction project in section 2805(a)(1) consistent with the definition for a military construction project in section 2801(b) by removing the portion of section 2805(a)(1) that is inconsistent with section 2801(b). All other provisions,

including the monetary limitation on minor construction, are unaffected.

CLARIFICATION OF FUNDING FOR ENVIRONMENTAL RESTORATION AT INSTALLATIONS TO BE CLOSED OR REALIGNED (SEC. 2807)

Environmental restoration at bases selected for closure or realignment as the result of BRAC 95 is restricted to the Base Realignment and Closure (BRAC) account as the source of funding. Environmental restoration costs for Fiscal Year 1996 at those bases were submitted in the President's budget for Fiscal Year 1996 as part of the Defense Environmental Restoration Account (DERA); the recommendations from the 1995 BRAC Commission will not be final until September 1995 and the Fiscal Year 1996 budget was submitted in February, 1995. This provision permits the environmental cleanup at installations selected for closure pursuant to BRAC 95 to be funded from the DERA account for Fiscal Year 1996 only. After Fiscal Year 1996, environmental restoration must be funded from the BRAC account.

CONTRACTS FOR CERTAIN SERVICES AT INSTALLATIONS BEING CLOSED (SEC. 2808)

P.L. 103–160, Section 2907, authorized the Secretary to obtain certain caretaker services from local governments at installations being closed. As written, however, Section 2907 requires the use of a standard government contract executed in accordance with applicable procurement laws and regulations. Local governments are reluctant, and in some cases have refused, to enter into such standard government contracts.

The proposed legislation authorizes the use of less formal agreements with local governments while still protecting the Government's interests, thereby providing the military departments with the maximum degree of flexibility in obtaining caretaker services at closing installations during the transition from military to civilian use. The primary benefit is the ability to obtain caretaker services by the most practical and cost effective means.

CLARIFICATION OF COVENANTS APPLICABLE TO LEASES (SEC. 2809)

Environmental remedial actions may take several years to complete and to demonstrate their effectiveness. This amendment allows DoD to enter into an agreement with prospective purchasers and the environmental regulator to assure all remedial actions will be undertaken by DoD after a lease transfer. This agreement is similar to purchase agreements private parties can enter into to transfer cleanup liability with the additional protection of regulator concurrence. Without this amendment, interim leases and the associated economic redevelopment at closing military installations are impeded.

CONTENTS OF CERTAIN DEEDS AND LEASES (SEC. 2810)

This provision allows EPA or a state to defer the Superfund (Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended) Section 120(h)(3)(B)(I) determination if an agreement between DoD and the potential buyer has been entered and appropriate measures will be undertaken assuring future remedial action, if necessary. This determination requires the completion of all environmental remedial action before DoD can convey title to property at closing bases.

This amendment allows DoD to enter into long-term leases while any phase of cleanup, which can be a lengthy process, is ongoing. Long-term leases at closing military installations are an important tool for both the government and the community in stimulating the local economic redevelopment following the base closure. However, a recent court decision questioned DoD's ability under CERCLA 120(h)(3)(B) to enter into long term leases before remedial action is complete. Without this amendment, both the Government's ability to enter into such long-term leases at closing bases and the community's ability to begin economic redevelopment as soon as possible are impeded.

UTILITY TRANSFER AT FORT DIX, NEW JERSEY TO BURLINGTON COUNTY, NEW JERSEY (SEC. 2811)

This provision will authorize the Secretary of the Army to transfer the Resource Recovery Facility at Fort Dix, New Jersey, which receives solid waste from the Fort Dix Military Reservation, McGuire Air Force Base, and other operations at Fort Dix, including a federal prison, to Burlington County, New Jersey.

The Fort Dix Resource Recovery Facility has failed to produce the cost savings originally anticipated. Moreover escalating O&M expenses continue to increase solid waste disposal costs beyond projections. With the reduced activities of Fort Dix due to base realignments and closure, the Fort is unable to collect enough solid waste to utilize the facility effectively. In addition the facility is currently in violation of its Air Permit issued by the New Jersey Department of Environment Protection and Energy (NJDEPE).

The transfer of the Resource Recovery Facility to Burlington County will result in present worth savings of approximately $20.6M, which translates into annual savings to the Army of $1.94M, as calculated by a life cycle costs analysis. Further, as the incinerator operator, Burlington County would bear all costs related to operations and maintenance of the facility, including ash testing and disposal, and utilities. This would eliminate O&M costs, including operator, auxiliary fuel and off-site disposal costs associated with incinerator by-products from the Army's annual budget. With Burlington County operating the facility at full design capacity, additional steam would be generated, displacing fuel oil that would otherwise be used to supply steam to the steam loop. The Army would realize fuel savings from increased utilization of the resource recovery facility since the county would credit the installation for steam purchase from the facility. Additionally, conveyance to the county will relieve the Army of safety and environmental compliance requirements associated with the operation of the facility.

UTILITY TRANSFER AT FORT GORDON, GEORGIA, TO THE CITY OF AUGUSTA, GEORGIA (SEC. 2812)

The provision will authorize the Secretary of the Army to transfer a water plant and a wastewater treatment plant and their collection and distribution systems at Fort Gordon, Georgia to the City of Augusta, Georgia. An Army analysis comparing the cost of private ownership of the water distribution and wastewater collection systems to the status-quo of Government-related ownership of the utility systems with constructed operation and maintenance of the systems demonstrates that it is most beneficial to the Army to transfer the systems to the City of Augusta, Georgia.

The transfer of the water and wastewater treatment plants and related collection and distribution systems to the City of Augusta will result in transferring all costs related to operations and maintenance of the facilities, including testing, permitting, and environmental compliance, to the city. This would reduce O&M costs from the post's annual budget. The conveyance also eliminates the Army's funding future major capital system improvements and shifts safety and environmental regulation compliance from the Army to the City of Augusta.

UTILITY TRANSFER AT FORT IRWIN, CALIFORNIA TO THE SOUTHERN CALIFORNIA EDISON COMPANY, CA (SEC. 2813)

This provision will authorize the Secretary of the Army to transfer an electrical distribution system at Fort Irwin, California to the Southern California Edison Company, CA. Fort Irwin, California owns and operates an existing on-post 12-kV electrical distribution system. The Ft. Irwin electrical distribution system is aging and a planned maintenance and replacement program is not included in the Army budget, nor is the inclusion of the cost of such a program in the Army budget practicable.

It is vital to the continued operation of the National Training Center that planned maintenance and a replacement program be in place. The transfer of the electrical distribution system to the Southern California Edison Company will result in Southern California Edison implementing a planned maintenance and replacement program in compliance with the California Public Utility Commission standards, while providing the Army utility credits toward the purchase of electrical power. The Army will also be relieved of the costs of massive capital improvements and of future environmental liability.

SALE OF ELECTRICITY (SEC. 2814)

This provision expands the Department of Defense's authority by providing greater flexibility to allow the military departments to take advantage of changing electric power marketing conditions. This revised authority increases private sector electric generating plant investment opportunities on military installations. This change also increases the ability to outsource for energy, as recommended by the National Performance Review.

The Energy Policy Act of 1992 provisions for increased competition of independent power producers has created considerable private sector interest in locating electric generating facilities on military bases. Current authority permits the military departments to retain revenues from only those facilities that use renewable energy or are cogeneration facilities. The current limitation restricts the potential benefits of making military bases available to improve energy independence, improve efficiency, facilitate private sector investment in energy plants at military bases, and improve electrical reliability.

ENERGY AND WATER CONSERVATION SAVINGS AT MILITARY INSTALLATIONS (SEC. 2815)

This provision specifically includes water conservation in the Department's overall conservation efforts, making the incentives to the Department available for water conservation efforts, in addition to other energy conservation efforts.

CONVEYANCE OF PRIMATE RESEARCH LABORATORY AND AIR FORCE OWNED CHIMPANZEES TO THE COULSTON FOUNDATION (SEC. 2816)

The provision authorizes the Air Force to transfer a new primate research laboratory located at Holloman Air Force Base (AFB) and a colony of Air Force owned chimpanzees to the Coulston Foundation, a not-for-profit corporation engaged in primate research. In 1989, and 1990, New Mexico State University (NMSU) received federal grants totaling ten million dollars for the construction of a new, state-of-the-art primate research laboratory within the boundaries of Holloman AFB. The new building was to replace certain outworn facilities which had been leased to NMSU for primate research. A colony of approximately 150 Air Force owned chimpanzees were used in NMSU's research

program and this colony, along with additional NMSU research animals, was to occupy the new laboratory. The General Services Administration (GSA) was responsible for grant administration and transfer of the completed building. On July 8, 1994, NMSU indicated it no longer wished to conduct a primate research program and would terminate its leases with the Air Force on September 30, 1994. In light of NMSU's termination of its primate research program, GSA deemed it inappropriate and inconsistent with the grant terms to transfer the new building to NMSU. GSA transferred the building to the Air Force since the building is on property under the custody of the Air Force and was intended to house the Air Force chimpanzees.

The Air Force has no further requirement for its chimpanzee colony and desires to divest itself completely of chimpanzee ownership. The Coulston Foundation is a private organization with demonstrated expertise with primate research programs. The Coulston Foundation is familiar with the Holloman chimpanzee research program and, pursuant to an agreement with NMSU, and with the Air Force consent, has been operating the primate research facility on a day-to-day basis since July, 1993. In that time, Coulston has demonstrated its interest, commitment of resources, and expertise in program management. Coulston is therefore a well qualified and appropriate transferee.

The transfer of the laboratory and the Air Force owned chimpanzees will be without consideration in light of the value of Coulston's primate research activities and its caretaking of the chimpanzee population. The Air Force will continue to provide to Coulston, by lease, the underlying land and the security of location of the primate laboratory on a military installation. In the event Coulston declines to accept the facility and the chimpanzee colony at the time of conveyance, the Air Force is authorized to convey the facility and the colony to another not-for-profit entity the Air Force determines capable of caring for the colony and conducting research.

SPECIAL OPERATIONS LAND LEASE AUTHORITY (SEC. 2817)

The amendment making the Special Operations leasing authority permanent. The amendment also makes permanent the reporting requirement of activities carried out under this section.

CONSTRUCTION OF ELEMENTARY AND SECONDARY SCHOOLS ON DOD INSTALLATIONS (SEC. 2818)

Section 2008 of title 10, United States Code, enables DoD to fund repair and maintenance and construction projects on school buildings constructed by Department of Education pursuant to section 10 of the Act of September 23, 1950 (20 U.S.C. 640). Section 10 of P.L. 81–815 was repealed as part of the Improving America's Schools Act of 1994 (P.L. 103–382) as of October 20, 1994. Under section 8008 of the Elementary and Secondary Education Act (ESEA), the Department of Education is now authorized to continue to provide assistance for school facilities that were supported under section 10 prior to its repeal. Section 2008 would be amended in a similar fashion.

By Mr. BAUCUS (for himself and Mr. LOTT):

S. 729. A bill to provide off-budget treatment for the highway trust fund, the airport and airway trust fund, the inland waterways trust fund, and the harbor maintenance trust fund, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, that if one committee reports, then the other committee have 30 days to report or be discharged.

TRUST FUND RESTORATION ACT OF 1995

Mr. BAUCUS. Madam President, I want to thank the majority whip, Senator LOTT, for joining me in the introduction of this bill.

Madam President, today Senator LOTT and I are introducing a bill to take four transportation trust funds off budget, the highway, aviation, inland waterways, and harbor maintenance trust funds. This is a bipartisan effort.

Transportation issues tend to be bipartisan. Members on both sides of the aisle generally support highway construction, bridge repair and airport improvements. This support is there because infrastructure improvements are needed for increased efficiency and mobility across this country.

As the Senator from Mississippi said this bill also provides truth in budgeting. By taking these four trust funds off-budget, revenue generated from fuel and other excise taxes will be available for the intended purpose of infrastructure improvements.

Without the enactment of the principals of this bill, not all of the money paid into these trust funds by American consumers will be available. Right now, excess revenue and the balances of these trust funds is used to mask the size of the Federal deficit. The bill we are introducing today will fix this problem. It will put truth in our budgeting process. We need to give American taxpayers confidence that their taxes do not go down a black hole but that these tax dollars are used for infrastructure improvements.

This act will restore the trust in our transportation and infrastructure trust funds, by taking those trust funds off-budget. Thus, it will make sure we spend the money on the things the American public expects it to buy—better highways, bridges, airports, and waterways.

The act would also end the practice of considering this money—collected by user fees and held for a specific public purpose—as general revenue which can be used to reduce the deficit. That will make sure we have an honest accounting of the size of the deficit.

Specifically, the bill would take the highway, aviation, inland waterways, and harbor maintenance trust funds off-budget. These trust funds now have balances of over $30 billion. But our ability to use the money is restricted because they are counted as part of the general Treasury funds, and thus subject to budget laws.

HIGHWAY TRUST FUND

The highway trust fund is the biggest and most egregious example. This fund was established in 1956, to develop the system of highways on which our economy and millions of jobs depend. It is financed by excise taxes on gasoline, diesel, special fuels, and other items.

The fund now has a cash balance of over $19 billion—over $9 billion in the highway account and $10 billion in the transit account. This money was collected to pay for our Nation's infrastructure.

That is why people are paying these taxes, to pay for our Nation's infrastructure, and that is what I submit we must use those dollars for.

There are unmet needs across the country. The Department of Transportation estimates that we will need to spend $212 billion to eliminate the backlog of highway deficiencies and $78 billion to fix our decaying bridges, and that is without even considering new needs.

Today, 24 percent of Montana's bridges are deficient and in need of repair. There are highway projects that desperately need funding—projects such as the expansion of Highway 93 in the Kalispell-Whitefish area. You can find similar problems across the State—across the West—across the country. And it is galling beyond belief that a lot of money is right there, today, in the highway trust fund waiting for us to spend it.

But it cannot be. Why? Because it is held hostage by arcane, backward budget laws.

A sensible budget policy situation would let us use it for what it is supposed to be used for—highways. That would mean continued growth in travel and tourism. And it would give our businesses increased mobility and efficiency, making us more competitive in this global economy. And it would mean jobs. Remember that $1 billion in transportation spending generates 60,000 direct and indirect jobs.

CONCLUSION

Madam President, it is time to put trust back into these trust funds. Let us use some common sense. Let us take these trust funds off-budget so that the transportation user gets what he or she pays for—a better transportation system, not an accounting gimmick that disguises the size of the deficit.

I look forward very much to working with the Senator from Mississippi and others to pass this bill. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 729

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 ''Trust Fund Restoration Act of 1995''.

SEC. 2. DEFINITIONS.

In this Act:

(1) AIRPORT AND AIRWAY TRUST FUND.—The term ''Airport and Airway Trust Fund'' means the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986.

(2) HARBOR MAINTENANCE TRUST FUND.—The term ''Harbor Maintenance Trust Fund'' means the Harbor Maintenance Trust Fund

established by section 9505 of the Internal Revenue Code of 1986.

(3) HIGHWAY TRUST FUND.—The term ''Highway Trust Fund'' means the Highway Trust Fund established by section 9503 of the Internal Revenue Code of 1986.

(4) INLAND WATERWAYS TRUST FUND.—The term ''Inland Waterways Trust Fund'' means the Inland Waterways Trust Fund established by section 9506 of the Internal Revenue Code of 1986.

SEC. 3. BUDGETARY TREATMENT OF HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, INLAND WATERWAYS TRUST FUND, AND HARBOR MAINTENANCE TRUST FUND.

(a) IN GENERAL.—The receipts and disbursements of the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund—

(1) shall not be included in the totals of—

(A) the budget of the United States Government as submitted by the President under section 1105 of title 31, United States Code; or

(B) the congressional budget (including allocations of budget authority and outlays provided in the congressional budget);

(2) shall not be—

(A) considered to be part of any category (as defined in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4))) of discretionary appropriations; or

(B) subject to the discretionary spending limits established under section 251(b) of the Act (2 U.S.C. 901(b));

(3) shall not be subject to sequestration under section 251(a) of the Act (2 U.S.C. 901(a)); and

(4) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) DISBURSEMENTS SUBJECT TO APPROPRIATIONS.—The disbursements referred to in subsection (a) shall be subject to appropriations.

SEC. 4. SAFEGUARDS AGAINST DEFICIT SPENDING OUT OF AIRPORT AND AIRWAY TRUST FUND.

(a) IN GENERAL.—Chapter 471 of title 49, United States Code, is amended by inserting after section 47129 the following:

''§ 47130. Safeguards against deficit spending

''(a) ESTIMATES OF UNFUNDED AVIATION AUTHORIZATIONS AND NET AVIATION RECEIPTS.—Not later than March 31 of each year, the Secretary, in consultation with the Secretary of the Treasury, shall estimate—

''(1) the amount that would (but for this section) constitute the unfunded aviation authorizations at the termination of the first fiscal year that begins after that March 31; and

''(2) the net aviation receipts at the termination of the fiscal year referred to in paragraph (1).

''(b) PROCEDURE IF EXCESS UNFUNDED AVIATION AUTHORIZATIONS.—If, with respect to a fiscal year, the Secretary determines that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of the excess.

''(c) ADJUSTMENT OF AUTHORIZATIONS IF UNFUNDED AUTHORIZATIONS EXCEED RECEIPTS.—

''(1) DETERMINATION OF PERCENTAGE.—If the Secretary determines, in accordance with subsection (b), that there is an excess amount with respect to a fiscal year, the Secretary shall determine the percentage that the excess amount is of the sum of—

''(A) the amounts authorized to be appropriated from the Airport and Airway Trust Fund for the next fiscal year; and

''(B) the amounts available for obligation from the Airport and Airway Trust Fund for the next fiscal year.

''(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary determines, in accordance with subsection (b), that there is an excess amount with respect to a fiscal year, each amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund for the next fiscal year shall be reduced by the percentage determined in accordance with paragraph (1).

''(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—

''(1) ADJUSTMENT OF AUTHORIZATIONS.—Any amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund that is reduced under subsection (c)(2) shall be further adjusted in accordance with paragraph (2) if, after an adjustment has been made under subsection (c)(2) for a fiscal year, the Secretary determines that, with respect to the fiscal year—

''(A) the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2); or

''(B) an excess amount determined under subsection (b) is less than an excess amount determined as a result of a previous determination.

''(2) ADJUSTMENT.—Each amount that is subject to a further adjustment under paragraph (1) shall be increased by an equal percentage determined by the Secretary under paragraph (3).

''(3) PERCENTAGE.—

''(A) IN GENERAL.—Subject to subparagraph (B), the percentage referred to in paragraph (2) shall be the maximum percentage that does not cause the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2).

''(B) LIMITATION.—The amount of any increase determined under this subsection may not exceed the amount of the corresponding reduction under subsection (c)(2).

''(4) APPORTIONMENT.—The total amount of any increases determined for a fiscal year under paragraph (3) shall be made available to the Secretary for apportionment. The Secretary shall apportion the amount in accordance with this subsection.

''(5) PERIOD OF AVAILABILITY.—Any funds apportioned under paragraph (4) shall remain available for the period for which the funds would be available if the apportionment were made under appropriations and obligations for the fiscal year in which the funds are apportioned under paragraph (4).

''(e) REPORTS.—The Secretary shall report to Congress—

''(1) any estimate made under subsection (a); and

''(2) any determination made under subsection (b), (c), or (d).

''(f) DEFINITIONS.—In this section:

''(1) AIRPORT AND AIRWAY TRUST FUND.—The term 'Airport and Airway Trust Fund' means the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986.

''(2) NET AVIATION RECEIPTS.—The term 'net aviation receipts' means, with respect to any period, the amount by which—

''(A) the receipts (including interest) of the Airport and Airway Trust Fund during the period; exceeds

''(B) the amounts to be transferred during the period from the Airport and Airway Trust Fund under section 9502(d) of the Internal Revenue Code of 1986 (other than under section 9502(d)(1) of the Code).

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(4) UNFUNDED AVIATION AUTHORIZATIONS.—The term 'unfunded aviation authorization' means, at any time, the amount by which—

''(A) the total amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund that has not been appropriated or obligated; exceeds

''(B) the amount available in the Airport and Airway Trust Fund at that time to make the appropriation or to liquidate the obligation (after all other unliquidated obligations at that time that are payable from the Airport and Airway Trust Fund have been liquidated).''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 471 of title 49, United States Code, is amended by adding at the end of subchapter I the following:

''47130. Safeguards against deficit spending.''.

SEC. 5. SAFEGUARDS AGAINST DEFICIT SPENDING OUT OF INLAND WATERWAYS TRUST FUND AND HARBOR MAINTENANCE TRUST FUND.

(a) ESTIMATES OF UNFUNDED INLAND WATERWAYS AUTHORIZATIONS AND NET INLAND WATERWAYS RECEIPTS.—Not later than March 31 of each year, the Secretary, in consultation with the Secretary of the Treasury, shall estimate—

(1) the amount that would (but for this section) constitute the unfunded inland waterways authorizations and unfunded harbor maintenance authorizations at the termination of the first fiscal year that begins after that March 31; and

(2) the net inland waterways receipts and net harbor maintenance receipts at the termination of the fiscal year referred to in paragraph (1).

(b) PROCEDURE IF EXCESS UNFUNDED AUTHORIZATIONS.—If, with respect to a fiscal year, the Secretary determines with respect to a Trust Fund that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of the excess.

(c) ADJUSTMENT OF AUTHORIZATIONS IF UNFUNDED AUTHORIZATIONS EXCEED RECEIPTS.—

(1) DETERMINATION OF PERCENTAGE.—If the Secretary determines, in accordance with subsection (b), that there is an excess amount with respect to a fiscal year, the Secretary shall determine the percentage that the excess amount is of the sum of—

(A) the amounts authorized to be appropriated from the Trust Fund for the next fiscal year; and

(B) the amounts available for obligation from the Trust Fund for the next fiscal year.

(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary determines, in accordance with subsection (b), that there is an excess amount with respect to a fiscal year, each amount authorized to be appropriated or available for obligation from the Trust Fund for the next fiscal year shall be reduced by the percentage determined in accordance with paragraph (1).

(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—

(1) INCREASE OF AUTHORIZATIONS.—Any amount authorized to be appropriated or available for obligation from a Trust Fund that is reduced under subsection (c)(2) shall be further adjusted in accordance with paragraph (2) if, after an adjustment has been made under subsection (c)(2) for a fiscal year with respect to the Trust Fund, the Secretary determines that, with respect to the Trust Fund and the fiscal year—

(A) the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2); or

(B) an excess amount determined under subsection (b) is less than an excess amount determined as a result of a previous determination.

(2) ADJUSTMENT.—Each amount that is subject to a further adjustment under paragraph (1) shall be increased by an equal percentage

determined by the Secretary under paragraph (3).

(3) PERCENTAGE.—

(A) IN GENERAL.—Subject to subparagraph (B), the percentage referred to in paragraph (2) shall be the maximum percentage that does not cause the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) with respect to the Trust Fund.

(B) LIMITATION.—The amount of any increase determined under this subsection may not exceed the amount of the corresponding reduction under subsection (c)(2).

(e) REPORTS.—The Secretary shall report to Congress—

(1) any estimate made under subsection (a); and

(2) any determination made under subsection (b), (c), or (d).

(f) DEFINITIONS.—In this section:

(1) NET HARBOR MAINTENANCE RECEIPTS.—The term ''net harbor maintenance receipts'' means, with respect to any period, the receipts (including interest) of the Harbor Maintenance Trust Fund during the period.

(2) NET INLAND WATERWAYS RECEIPTS.—The term ''net inland waterways receipts'' means, with respect to any period, the receipts (including interest) of the Inland Waterways Trust Fund during the period.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Army.

(4) TRUST FUND.—The term ''Trust Fund'' means the Inland Waterways Trust Fund or the Harbor Maintenance Trust Fund, as the case may be.

(5) UNFUNDED HARBOR MAINTENANCE AUTHORIZATIONS.—The term ''unfunded harbor maintenance authorizations'' means, at any time, the amount by which—

(A) the total amount authorized to be appropriated or available for obligation from the Harbor Maintenance Trust Fund that has not been appropriated or obligated; exceeds

(B) the amount available in the Harbor Maintenance Trust Fund at that time to make the appropriation.

(6) UNFUNDED INLAND WATERWAYS AUTHORIZATIONS.—The term ''unfunded inland waterways authorizations'' means, at any time, the amount by which—

(A) the total amount authorized to be appropriated or available for obligation from the Inland Waterways Trust Fund that has not been appropriated or obligated; exceeds

(B) the amount available in the Inland Waterways Trust Fund at that time to make the appropriation.

SEC. 6. ENFORCEMENT.

An officer or employee of the United States Government who fails to comply with this Act and the amendments made by this Act shall be subject to the penalties specified in section 1350 of title 31, United States Code.

SEC. 7. APPLICABILITY.

This Act and the amendments made by this Act shall apply to authorizations and obligations made for fiscal years 1996 and thereafter.

Mr. LOTT. Madam President, I have seen a quote, ''As transportation trust funds sit unused, so do Americans sit in traffic jams on beat-up roads or in dingy airport lounges.''

That is a fact. For many years, going back to my years in the House, I always felt as if our transportation trust funds were abused. The American people pay funds through taxes, or fees, if you will, directly into trust funds for highways and for airports, and yet those funds are quite often not used. They are used, I guess, but only to make the deficit look better.

We should have a system where, when the American people pay into a trust fund for a specific purpose, those funds in a logical way would be used so that the people will have the transportation infrastructure they want; so that they will be safer; so that we will not have highways falling apart and bridges collapsing. It is time we do something about it.

What we have now does not make fiscal sense, and it does not make infrastructure sense. So today I am introducing a bill with the distinguished Senator from Montana [Mr. BAUCUS] and it will move to restore the integrity of America's transportation trust funds.

I know the Senator from Montana has worked on this issue for a long time. He is on the committee that has jurisdiction in this area, but I also serve as chairman of the Surface Transportation Subcommittee of the Committee on Commerce, Science, and Transportation, so I am delighted to join with him in this effort.

The bill will require that the funds be used to complete maintenance and expansion of America's infrastructure that is long overdue and is already authorized. I am talking about a procedural budget change for the following funds: highway trust; airport and airway trust; inland waterways trust; and harbor maintenance trust.

The effect of our bill is to remove the transportation trusts from: Calculations of the on-budget deficit; congressional budget resolution's spending allocations; and spending points of order under the Budget Act.

Daily, $80 million pours into these trusts through fuel taxes while $360 billion in documented infrastructure needs are neglected. This has permitted a $33 billion cash balance to build up in these trusts. This balance does not help those Americans who need their transportation infrastructure repaired or upgraded. This balance only helps Federal budgeteers—and I am one of them—who are using these funds to mask the real deficit, while not doing what needs to be done in the infrastructure.

Our legislative proposal offers a simple and direct solution—take these transportation trust funds off budget.

We have proposed a responsible and appropriate legislative solution because the American Government made an implied contract with taxpayers who are paying these user fees. Why collect the fees if it is not really going to be used for the stated purpose? The American people are being deceived by hiding the true size of the Federal deficit. These misleading arguments mask the real intent of the unified budget.

The American people want to get a more accurate and reliable budget. This will not unravel the unified budget process.

Besides, transportation trusts have a unique, special antideficit mechanism unlike other trust funds. Let me tell you why these trust funds are different.

They are wholly self-financed by user fees. They must be self-supported because of a pay-as-you-go requirement. They are deficit proof because of spending limits and it only buys capital assets, not operating expenses.

Opponents will say that taking transportation trusts off budget is bad because unified budgets only work if we have everything included and that the off budget status will skew national priorities.

Transportation trusts are neither more special than the other 160 trusts nor will they escape congressional review.

There is a House companion bill, a very good bill. This one is very similar, and I presume will be basically identical, although we are making some improvements in the bill. It was introduced by the chairman of the appropriate committee there, Congressman BUD SHUSTER, of Pennsylvania.

In the House, they already have 147 cosponsors. So I am inviting our colleagues here in the Senate to take a look at this bill and join in cosponsoring it. I think we will have a large majority of our colleagues who will support it.

Let me be very clear; this bill is not about playing budget gimmicks. It is more about trying to do what really needs to be done and what we committed to the American people that we will do.

In fact, this is really truth in budgeting. It is time that we face up to the infrastructure needs of America. There are dangers out there in this country. The money is there and it is not being spent. This would give us a logical, reasonable process in a bipartisan way to get that done.

By Mrs. BOXER:

S. 732. A bill to amend chapter 81 of title 5, United States Code, to prohibit Members of Congress from receiving Federal worker's compensation benefits for injuries caused by stress or any other emotional condition, and for other purposes; to the Committee on Labor and Human Resources.

FEDERAL WORKERS' COMPENSATION BENEFITS LEGISLATION

• Mrs. BOXER. Mr. President, today I am introducing legislation that would prohibit Members of Congress from receiving Federal workers' compensation benefits based on claims of psychological stress. I am sure it would surprise most Americans that Members of Congress are eligible for these benefits, but it is true.

In California, a public official who pled guilty to a felony has been able to collect hundreds of thousands of dollars in stress benefits under the State workers compensation system. This elected official, a former member of the Board of Equalization pled guilty in 1992 to falsifying expense accounts. After being forced to resign in disgrace, he claimed that the stress of political

life, exacerbated by the stress of evading the law, caused him such emotional trauma that he was unable to work. Unbelievably, the State Workers Compensation Board agreed with him, and awarded him $73,788 in workers compensation benefits plus a lifetime disability pension.

Several bills have been introduced in the California Legislature to correct this problem with State law, but until now, no corrective proposal has been introduced at the Federal level. It is important to note that this legislation applies only to stress claims by Members of Congress and does not infringe on the ability of States to set workers compensation law.

Mr. President, being a Member of Congress is a stressful job. I know that and all my colleagues know it. We knew it when we ran for the job and we know it now. There is no reason why we should be able to claim stress and collect a taxpayer-funded lifetime Government entitlement.

I look forward to working with my colleagues on this issue and I hope the Congress will enact this bill when it considers pension reform later this year.

I ask unanimous consent that the full 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. 732

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

SECTION 1. LIMITATION ON WORKERS' COMPENSATION CLAIMS BY MEMBERS OF CONGRESS.

(a) IN GENERAL.—Section 8101(5) of title 5, United States Code, is amended to read as follows:

''(5) 'injury'—

''(A) includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eye-glasses and hearing aides would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services; and

''(B) shall not include, with respect to a Member of Congress, injuries or occupational diseases caused by stress or any mental or emotional condition.''.

(b) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of the enactment of this Act, and shall apply only to claims filed under chapter 81 of title 5, United States Code, on or after such effective date.●

By Mr. ROTH (for himself, Mr. BIDEN, Mr. JEFFORDS, Mr. LEAHY, Mr. MOYNIHAN, Mrs. MURRAY, Mr. CHAFEE, Mrs. BOXER, Mr. COHEN, and Mr. LAUTENBERG):

S. 733. A bill to amend title 23, United States Code, to permit States to use Federal highway funds for capital improvements to, and operating support for, intercity passenger rail service, and for other purposes; to the Committee on Environment and Public Works.

INTERCITY RAIL INVESTMENT ACT

Mr. ROTH. Mr. President, The legislation I am introducing today has a very simple and important purpose: To give States the much needed flexibility to use Federal transportation money for Amtrak passenger rail service.

Since late last year, Amtrak has begun a much needed restructuring. This restructuring has required substantial participation by State governments in determining which rail lines will stay in service. While States currently have wide authority in allocating Federal transportation dollars—whether it be on pedestrian walkways, bikeways, buses, light rail, highway and other intermodal and commuter based transit needs—a damaging double standard exists which by law prevents them from utilizing these funds to improve, expand or simply maintain vital Amtrak service if they so choose.

My legislation would eliminate this double standard and allow States to utilize their Federal transportation dollars for Amtrak passenger rail service.

There are a number of realistic, sensible ways this flexibility can be achieved.

One option is to allow States to use funds available in the Congestion Mitigation and Air Quality Program [CMAQ] for passenger rail service. This program, created in the Intermodal Surface Transportation and Efficiency Act, provides an incentive to focus on transportation alternatives which reduce traffic congestion, improve air quality and lower fuel consumption. Amtrak passenger rail service clearly meets these criteria, potentially better than any other transportation alternative currently available. My bill would allow States to use CMAQ funds for passenger rail service if they so choose.

More rural regions, that are less congested, receive proportionately less CMAQ funds, but also receive additional funds through the Rural Public Transportation Program, known as section 18. These funds can be used for capital costs, and would be particularly appropriate for those more rural areas that depend on passenger rail service. In addition, funds in excess of the annual State allocation can be transferred into this category, so expenditures on passenger rail would not detract from other services being funded through section 18. These services include intercity bus service. My bill would ensure that States—if they choose to do so—could use section 18 funds for Amtrak passenger rail service.

Another important way to achieve flexibility is to designate appropriate Amtrak routes as part of the National Highway System, eligible for National Highway System funding. Many of Amtrak's rail corridors meet the definition of an arterial route serving major national population centers, popular travel destinations and key intermodal transportation facilities and hubs. However, current law prevents States from using their Federal transportation allocation for Amtrak. My legislation would amend the National Highway System map to include the Northeast rail corridor and other high speed routes—giving States the flexibility to use National Highway System funds for Amtrak passenger rail service if they so choose.

Passenger rail plays a critical role in this country's transportation infrastructure. But current law does not take this into account. Most projects that are in the same corridor as, or in proximity to, a National Highway System segment, or that will improve the level of service on an National Highway System segment, are eligible for National Highway System funding. However, passenger rail, which is often in the same corridor as an National Highway System segment, is not eligible to receive National Highway System funding. My legislation would eliminate this contradiction and give States the flexibility they need to use National Highway System funds wisely and productively to encourage passenger rail service.

Congress has recognized the need for States to have flexibility with Federal subsidies in important local transportation decisions. I believe it is time that that recognition be extended to allowing States to go with something that works. This proposal is an optimal mix of alternatives that will support long distance, intercity commuter rail service and the benefits that we know it accrues. Amtrak is safe, fuel efficient, speedy and the best transportation alternative for millions of Americans. It is time for the Federal Government to remove the barriers in place that prevent States from deploying resources in their best interest and allowing Amtrak to reach its potential.

Mr. President, this legislation calls for no new spending. It does not change Federal transportation allocation formulas, nor does it mandate States to spend their Federal transportation dollars on passenger rail service. As I have said, it simply gives States the ability to spend Federal transportation money as they see fit and in ways which have been repeatedly found to be good for them and good for the country.

Mr. JEFFORDS. Mr. President, I would like to commend Senator ROTH for his work on this important legislation.

This Monday, May 1, residents of my State will celebrate the introduction of a revitalized passenger rail link to Vermont. This new service, called the Vermonter, will replace the Montrealer, which previously ran from Washington to Montreal.

As Amtrak moved to restructure America's national passenger rail corporation this past winter, they indicated that train service across the country would be scaled back. The proposal called for the elimination of the

Montrealer, the last passenger rail service to northern New England. In an effort to maintain rail service to our region, Senator LEAHY and I, along with the State of Vermont, held extensive negotiations with Amtrak. The result is the Vermonter. This new train will operate from Springfield, MA, to St. Albans, VT. This daytime service will allow visitors from across the country to conveniently visit our State and allow residents of northern New England to access the national passenger rail system.

Continuation of this rail service would not have been possible without the financial support from the State of Vermont. In fact, the Vermont State Legislature recently agreed to provide over $700,000 to support this service for the year. In addition, the Vermont Legislature has included funding to study yet another passenger rail link to the western side of Vermont. This new route would allow passengers from New York City to reach some of Vermont's most beautiful recreation areas in under 5 hours. I predict that many travelers will choose to take this new train over driving or flying.

Both of these rail lines represent an opportunity to get commuters, tourists, and travelers out of their cars. This will alleviate congestion, reduce air pollution and reduce our reliance on imported oil.

As noted, these rail lines also require State funding. The funding mechanism contained in this legislation will allow States to utilize Federal funding to maintain their rail infrastructure. Such efforts will assist in the establishment of intercity rail travel and the servicing of rail infrastructure for freight and other commercial rail options.

Mr. President, this legislation will allow States to decide how they will best use their Federal transportation dollars. I hope my colleagues will support these efforts.

By Mr. REID (for himself and Mr. BRYAN):

S. 734. A bill to designate the U.S. courthouse and Federal building to be constructed at the southeastern corner of Liberty and South Virginia Streets in Reno, NV, as the ''Bruce R. Thompson United States Courthouse and Federal Building,'' and for other purposes; to the Committee on Environment and Public Works.

BRUCE R. THOMPSON U.S. COURTHOUSE AND FEDERAL BUILDING

Mr. REID. Mr. President, I rise to offer legislation designating the new Federal building and courthouse in Reno the ''Bruce R. Thompson United States Courthouse and Federal Building.'' After considering the recommendations of many first-rate candidates, I have decided to support the naming of this new Federal building after the late Judge Bruce Thompson.

As a member of the Nevada Bar, I take great pride in our many distinguished members—both past and present—and believe that this selection will enjoy widespread support throughout the State's legal community. Judge Thompson was a honorable jurist whose years of service on the bench contributed greatly to the betterment of the Reno community.

One of the responsibilities I enjoy as a senior Senator is the naming of Federal buildings. This responsibility is an honor requiring that thoughtful deliberation be given to all of the recommendations from the people of Nevada. Other well-qualified names recommended to me for this building included the Laxalt family, Felice Cohn, Sarah Winnemucca, and Alan Bible.

The Laxalt family has contributed greatly to the betterment of the lives of many Nevadans. This family includes a distinguished former Senator, an author, a successful attorney, and a woman who has dedicated her life to the service of others as a Roman Catholic nun.

Felice Cohn is another prominent Nevadan whose name was recommended by a great number of supporters. Felice Cohn was a famous woman's suffrage activist who was admitted to the Nevada Bar in 1902 at the age of 18.

I also received a number of letters recommending a more historic designation honoring the truest native Nevadans, the American Indians. These supporters promoted naming the courthouse in honor of Sarah Winnemucca, a historic American Indian whose name all Nevadans associate with the city of Winnemucca, NV.

Finally, I must mention the tremendous support for naming the courthouse in honor of Senator Alan Bible. Senator Bible's dedicated service to the State of Nevada will always be remembered and honored by the people of Nevada.

The great number of letters and phone calls in support of these names evidences that their significant contributions and accomplishments are also well known and much appreciated throughout Nevada. The abundance of well-deserving nominees made my decision that much more difficult.

In the end, however, I concluded that Judge Thompson merited this honor. By naming the new Federal courthouse in Reno after Judge Thompson, we honor the memory of his exemplary years of service on the bench.

By Mr. HARKIN (for himself and Mr. BOND):

S. 736. A bill to amend title IV of the Social Security Act by reforming the Aid to Families With Dependent Children Program, and for other purposes; to the Committee on Finance.

THE WELFARE TO SELF-SUFFICIENCY ACT OF 1995

Mr. HARKIN. Mr. President, just a short while ago, I spoke in front of the Senate Finance Committee regarding welfare reform. I want to take this time on the floor to outline my thoughts on welfare reform and to announce that Senator BOND from Missouri and I are introducing a bipartisan bill today on the issue of welfare reform.

Mr. President, Franklin Roosevelt sounded the alarm 60 years ago. Listen to what he told Congress in 1935:

> Continued dependence on relief induces a spiritual and moral disintegration, fundamentally destructive to the national fiber. To dole out relief in this way is to administer a narcotic, a subtle destroyer of the human spirit.

Well, the current welfare system stands as a monument to all that Roosevelt warned against. Mr. President, today, Senator BOND and I are introducing a bipartisan plan to cut off that narcotic of dependence and inject a good strong dose of common sense into the welfare system.

It is a responsible, flexible, bipartisan plan that transforms the system from the ground up, moving families off the dead end of welfare and on the road to self-sufficiency.

These days, there are a lot of different approaches to reforming welfare. But there is also a lot of common ground. We all agree that the system is broken. It punishes work, rewards dependence, cripples opportunity and wastes tax dollars.

We all agree that there should be a change. We have heard it on the floor and in the other body. We have heard it from the administration, and we have certainly heard it from our constituents.

But what have we seen? Well, we have seen plans with a lot of tough talk but no real action. We have seen too much partisanship and not enough results. When you get down to the bottom line, what is the ultimate goal in welfare reform? Well, it is simple: To help families achieve self-sufficiency.

I choose my words carefully. I did not say that the goal in welfare reform is helping families move into a job after 2 years. I did not say that the goal of welfare reform was creating Government dead-end, make-work jobs for welfare recipients. I said self-sufficiency, a path to real independence; not simply getting families off of welfare, but keeping them off permanently.

That is the goal. So with any reform plan, let us ask the questions: What does it do to help families achieve self-sufficiency? What about responsibility? What about results?

Let us put the House plan to the test. Now they called it the Personal Responsibility Act. But it is just the opposite; it is totally irresponsible. I will give the plan credit for one thing—it reforms welfare all right; it reforms it from bad to worse.

Well, we do not want to trade one large failed dependency-inducing system for 50 varieties of the same thing.

We also hear a lot about flexibility. But under the House plan, States must cut off benefits for unwed teens. States must cut off benefits after 5 years. States must impose a family cap. And the list goes on.

So the House says they want to give the States flexibility but they take that flexibility right away. So that is not flexibility, it is more micromangement from the Federal Government that we have seen from the House of Representatives. It is not change, it is more of the same.

There are other plans. The administration has one, and others are floating around. There are some good ideas but, in the end, they all fail the test of achieving the basic goal: self-sufficiency and independence.

Some say we should stick a 2-year straitjacket on families on welfare. Two years maximum and you are out. One size fits all. But how responsible is an inflexible time limit? I have said, Mr. President, if you have a 2-year maximum, it will become a 2-year minimum. People will be on it for 2 years, and most people do not need to be on welfare for 2 years. Where are the real incentives for families to escape the welfare trap?

The fact is, as I said, many families do not need it for 2 years. With a hand up, they can start climbing the ladder or ramp of opportunity and move into the job market a lot sooner than that.

The legislation that Senator BOND and I are introducing today passes the test for true welfare reform. It is tough but realistic. It puts people on the path to self-sufficiency on day one, not after year two.

The centerpiece of our plan is the Family Investment Agreement, which requires all families on welfare to enter into an individualized contract with the State in order to receive welfare benefits.

Under our plan, each family would sit down with a case manager and chart a course to self-sufficiency.

How can we help you get back on your feet? Do you have a high school degree? What are your skills? Do you have a disability? Do you need training? Do you need child care? Do you need transportation?

The plan is put on paper. The recipient signs her or his name on the dotted line, and the State signs on the dotted line, and they put that contract to work. The contract spells out not how someone may stay on welfare but how they must get off.

It is based on a simple notion: We, as a society, are willing to help you, but only if you are willing to help yourself.

We can give a person a boost through education, through health care, through child care, or transportation, but the person must use it to lift himself up the ladder of opportunity and become self-sufficient.

If a welfare recipient says, ''I am sick of school. I do not want training. Just give me my check, and you keep the contract,'' what happens then? Simple: Their benefits will be cut and ultimately terminated.

Our plan also rewards work. Instead of keeping incentives for people to stay on welfare, our bill helps people work their way out. If a welfare recipient is working, we will let them keep more of what they earn. If they are investing in themselves—saving to start a business, buy a first home, or pay for education—the Government will no longer hold that against them. Their assets will no longer be a liability.

This plan is about responsibility—for people and for States. The State has a responsibility to help families in need by providing the tools to achieve independence. Families have a responsibility to use those tools to build a path to self-sufficiency.

Our plan is also about real flexibility for people and for States. Instead of taking a cookie-cutter approach, each family investment agreement is tailored to a family's unique needs. And individualized time limits based on those circumstances are then set.

In some cases, benefits will be needed for 6 months. Others may require more time; others less. But we recognize one size does not fit all, whether they are individuals or whether they are States.

We also recognize that the States need more flexibility. What works in Brooklyn, IA, may not work in Brooklyn, NY. Instead of dictating how States must run every aspect of their programs, our plan cuts Federal red-tape and leaves States with the option of choosing policies best for them. We also block grant the funds States use to administer welfare programs.

So our plan is flexible for people on welfare. It is flexible for States, but it is inflexible when it comes to the bottom line—we demand results.

When fully implemented, our plan would require 90 percent of recipients to sign agreements and find work.

We also know that a critical part of welfare reform is to crack down on deadbeat parents who fail to pay child support. At least $5 billion in court-ordered child support goes uncollected every year. There is over $560 million in delinquent child support owed to Iowa children.

Our bill turns the collection of some past due child support over to the IRS—most of these cases involve parents who have crossed State lines. And we provide States with several options for improving paternity establishment, requiring community services, revoking licenses, and publishing the names of deadbeat parents.

So deadbeat parents may try to run, but under our plan, they cannot hide.

Our bill puts States in the driver's seat by giving them the option of requiring minor parents to live with their parents or another responsible adult. Our plan also increases funding for the title X family planning program by $100 million to improve education services.

So our bill is a pragmatic, commonsense bill. It demands responsibility from day one, expands State flexibility, improves child support collection, and addresses the increase in illegitimate births.

One more thing, Mr. President. This plan works. How can I be so sure? Because it is working right now in my home State of Iowa. If people have not heard about it, do not feel bad. Not many people have.

I call the Iowa welfare reform plan the Rodney Dangerfield of welfare reform. It does not get any respect, or at least not enough attention.

Mr. President, several years ago, the State of Iowa embarked upon experimentations on how to best deliver welfare and get people off of welfare. Based upon those experiments, a year and a half ago, Iowa passed a welfare reform bill.

I might point out, Mr. President, that that bill passed the Iowa Legislature with the support of conservative Republicans and liberal Democrats. It was signed—in fact, it only got one dissenting vote—into law by a conservative Republican Governor, Governor Branstad.

What has happened in Iowa since we have put our welfare reform to work? The number of welfare recipients holding jobs has grown by 80 percent. These charts will show that. These are the number of families on welfare who are working. When we started, we had about 6,500, and it has now gone up to 12,000—almost double. We now have the distinction, Mr. President, of having a higher percentage of people on welfare working in Iowa than in any State in the Nation. We are proud of that. So the plan is working. It is getting people to work.

Second, look what has happened to our case load. Now, initially, we knew the case load would go up because we allowed people to work to keep more of their earnings, and people were able to get on, and then the case load started coming down dramatically in the State of Iowa as people became self-sufficient and got off of welfare.

Here is the real icing on the cake. That is the total expenditures on our AFDC grants in Iowa. The yellow line is just for fiscal year 1994; the blue line is fiscal year 1992; the green line is fiscal year 1993; the red line is fiscal year 1995.

We can see since last October what has been happening to the cost in our program. It has dropped precipitously in the State of Iowa. In fact, the average recipient payment has gone from $373 a month to $343 a month.

Therefore, what we have done is we have more people working, we are reducing the case load by getting people off of welfare earlier, and we are reducing the cost. What more could anyone want in a welfare reform program?

It is tough. Sure, it is tough. In fact, Iowa is, I believe, now the only State that has actually cut welfare benefits to people who refused to sign these contracts or who violate their contracts. We have actually stopped cash payments. Other States talk tough, but Iowa has done it. We had the carrot and we have had the stick, and it is working in the State of Iowa. Therefore, Mr. President, we know the right way to go.

Iowa and Missouri have worked together for meaningful welfare reform. I urge my colleagues to examine the Harkin-Bond plan and join us in this commonsense, bipartisan approach to reaching common ground on welfare reform.

Mr. President, I ask unanimous consent that a summary of the legislation appear in the RECORD.

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

S. 736, WELFARE TO SELF-SUFFICIENCY ACT OF 1995—A BIPARTISAN APPROACH TO WELFARE REFORM

The Welfare to Self-Sufficiency Act of 1995 is a common-sense, bipartisan plan that transforms welfare. It changes today's failed dependency-inducing system to one that demands responsibility from day one on the part of welfare recipients and provides them the helping hand they need to get off welfare and become self-sufficient. Unlike other reform plans it does not apply a one-size fits-all two year time limit, but sets individualized time limits (most of which should be well under two years) based on the particular circumstances of each family. It makes work more financially attractive than welfare by expanding work incentives. This plan also emphasizes moving recipients into private sector jobs, not government jobs created solely for placement purposes.

The legislation also provides much greater flexibility to the states so they can design welfare programs to fit their unique characteristics. It eliminates federal bureaucracy and red tape by consolidating the administrative costs of major welfare programs into a block grant, while maintaining uniform federal eligibility criteria for benefits.

In addition, the Welfare to Self-Sufficiency Act combats the unacceptable rise in teenage pregnancy by demanding responsibility from teens and providing them positive incentives, but without measures that primarily punish children who bear no responsibility for the conditions surrounding their birth. It also fundamentally overhauls our failed child support enforcement system, cracking down on deadbeat parents that escape their responsibilities by moving across state lines and failing to fulfill their obligations to their children.

The bill is paid for by reforming and ending the rapid growth in federal payments to states for the administration of welfare programs, requiring sponsors of immigrants to take greater financial responsibility for ensuring that immigrants don't fall onto welfare rolls and through other savings achieved in related welfare programs.

TITLE I—FAMILY INVESTMENT AGREEMENT

The centerpiece of the legislation is the Family Investment Program which requires AFDC families to negotiate and sign individualized Family Investment Agreements in order to receive benefits. This agreement is a contract between the state and family which outlines the steps each individual family must take to become self-sufficient and move off of welfare. The contract would outline activities such as job training, education, job search and work that family would have to participate in. States would have to provide necessary services, including child care, to keep their end of the contract. Unlike other proposals which set a one-size-fits-all two year time limit, this plan provides for time limits that will vary from family to family based on the unique circumstances of each family. In Iowa, where this plan has been put into effect, most contracts contain time limits shorter than two years.

Families who refuse to negotiate and sign a contract or fail at any time during the contract to meet the obligations outlined in the individual agreement would enter a limited benefit plan that leads to the termination of welfare benefits. Under the limited plan, families would continue to receive full benefits for three months, for the next three months benefits would be reduced to the children's portion of their benefits and benefits would be completely cut off at the end of this six month period. These families would be ineligible for AFDC benefits for six additional months.

TITLE II—INCREASING WORK AND SELF-SUFFICIENCY

This bill promotes work in private sector jobs that are needed to enable a family to become self-sufficient. States would be given the option of providing the following incentives that will encourage families to work and save:

The disregard for work expenses could be increased from $90 a month to 20% of gross earnings.

Under current law, an individual has a 12 month work transition period. During the first 4 months, $30 per month plus 1/3 of gross earnings are disregarded. For the following 8 months $30 is disregarded. The bill permits states to disregard 50% of gross earnings until a family has reached self-sufficiency.

The resource limitation for families applying for AFDC could be increased from $1000 to $2000. To encourage saving by AFDC families, the resource limitation for recipients already on public assistance could be increased from $1000 to $5000. In order to assure more reliable transportation to and from work, recipients could be allowed to own a car worth $3,000, rather than the current limit of $1,500.

Families are also encouraged to save and plan for long-term expenses such as starting a small business, buying a first home or for job training or education programs. AFDC families could be allowed to save up to $10,000 for these purposes. Training programs for small business development are also included.

At state option, earnings of teen-age members of the household would no longer be counted in determining a family's eligibility for AFDC.

In order to promote private sector job opportunities for welfare recipients, states would also be given the option to implement wage supplementation programs in which employers could add to value of AFDC and food stamp benefits to the wages earned by AFDC eligible workers.

TITLE III—IMPROVING STATE FLEXIBILITY

To help states implement education and training programs for welfare recipients, the federal contribution for the JOBS program is increased. This enhanced match is provided for funds that a state spends over their 1995 level.

States need more flexibility to design welfare programs that meet the individual characteristics of each state. The waiver authorization of the 1988 Family Support Act was a good start. However, too often the waiver process has been cumbersome and time-consuming.

To provide states with added flexibility, the bill authorizes several policy options which will not require federal waivers. The bill provides these additional state options:

Provides for the equivalent treatment of stepparent and parent income; and

To make children healthier, requiring AFDC parents to have their children receive appropriate preventive health care, including timely immunization.

In addition, considerable federal red tape would be cut by block granting the administrative costs associated with AFDC, Food Stamps and Medicaid. Payments to states would be frozen at the 1995 level. The HHS Inspector General has reported that such an approach would save approximately $8 billion over 5 years.

TITLE IV—COMBATTING TEENAGE PREGNANCY

The rapid increase in out-of-wedlock births to young women must be addressed in a logical manner. We must educate teenagers about the problems of becoming parents at an early age, stabilize young families, and require teen age parents to finish high school. The bill attacks teen pregnancy on a number of fronts.

Continues the state option requiring minor parents to live with their parents or another responsible adult.

Provides a state option that requires teenage parents to stay in school.

Autorizes an additional $100 million for Title X Family Planning Grants targeted at combating teen pregnancy.

TITLE V—IMPROVING CHILD SUPPORT COLLECTION

Many families are forced onto the welfare rolls when an absent parent refuses to meet child support obligations. Only one-third of court ordered child support is paid today. This bill strengthens child support enforcement by referring collection of certain delinquent child support orders to the Internal Revenue Service. Cases in which less than 50% of ordered child support was collected by the state within a year (mostly involving out of state parents) would be referred to the IRS for collection. The IRS would be able to garnish wages of the deadbeat parents to recover ordered payments.

To encourage additional improvements in the collection of child support, the bill provides several new state options.

States may revoke the drivers, professional and occupational licenses of delinquent parents.

States may release the names of delinquent parents to the news media for publication.

Provides several new options to improve the process for establishment of paternity.

TITLE VI—FINANCING

The Welfare to Self Sufficiency Act would be paid for through savings achieved in three major areas:

Welfare payments to immigrants would be reduced by requiring the sponsors of these individuals to take greater responsibility for assuring that they don't become dependent on Federal assistance. The income of sponsors would be counted as available to the immigrant for purposes of determining eligibility for Food Stamps, SSI, AFDC and Medicaid until the immigrant becomes a U.S. citizen. Exceptions are made for non-citizens who are American veterans and those who have paid taxes for five or more years.

Payments to states for the administration of the AFDC, Food Stamps and Medicaid program would be block granted and frozen at 1995 levels.

Payments from the AFDC Emergency Assistance program would be capped. This program has experienced rapid growth and has been used for purposes beyond that originally intended.

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

• Mr. BOND. Mr. President, I am pleased to be an original cosponsor of the welfare bill my friend from Iowa has just introduced. Our proposal represents a fundamental change in the

way we would approach public assistance.

Since the creation of aid to families with dependent children, public aid has been regarded as an entitlement. If you meet the requirements for eligibility, you receive the cash, with no strings attached.

The current system has been rightly maligned by persons from all walks of life, including researchers, advocates, pastors, politicians, and even the recipients. The system is impersonal, inefficient and encourages continued dependency. Recipients can continue to receive cash month after month after month without having to think about their futures, and without being given any help in thinking what they might do to become self-sufficient.

Our proposal changes that way of thinking and requires something from the recipients in return for benefits. By the year 2003, 90 percent of recipients would be required to sign a binding contract with the State. The contract would outline the specific steps that each recipient will take to move off of welfare and into self-sufficiency. The contract states clearly when benefits will end. If a recipient fails to live up to the terms of the agreement at any time, benefits will be reduced and ultimately terminated.

I believe a large reason for the malaise and stagnation in today's welfare programs is that we have not required anything in return for benefits. This one way street, this lack of reciprocity, has bred an ethic of dependence rather than a work ethic. The only way we can turn this around is to require something in return for the generosity of the American taxpayer. Most Americans believe our Government has a responsibility to help families in need, but also believe that individuals have a responsibility to help themselves. This plan will help people who want to help themselves to create a better life.

The contractual arrangement between recipients and the State—representing the taxpayer donors—is the only requirement we would impose on the States. I believe it is fundamental to ensuring that we move people from welfare into productive private sector work. The House-passed bill requires States to implement a number of ideas that make good sense, but this notion of a contract is not among them. I am concerned that if we do not require that recipients of public assistance work, or behave responsibly, or take steps to wean themselves from public assistance in every case, then our efforts at reform will result in more of the same. The principle that Senator HARKIN and I have agreed on that should govern welfare reform efforts at every level is this: Public assistance is a two-way street. If you want to receive benefits, you must work and behave responsibly in return.

That said, we have also learned that our Nation's Governors are far ahead of Washington in generating reform ideas and in implementing them. Currently States must undertake a lengthy and cumbersome waiver process in order to obtain permission to implement common sense reforms. States that want to require welfare recipients to obtain preventive health care for their children, or to ensure that their children stay in school, or wish to allow recipients to keep more of their earnings from a part-time job—good ideas all—must now obtain a waiver from HHS. This is costly, time-consuming, and silly. Our bill permits States to implement any one, a combination of, or all of a variety of options to reform welfare without permission from the feds.

The current system penalizes work and saving by placing severe restrictions on outside income and on assets. Our plan permits States, at their discretion, to increase the earnings limits and amounts families can save prior to losing benefits. We also permit States to disregard the income of a teenage worker in the family. The current system encourages a high rate of teenage unemployment among AFDC households. The last thing stressed, low-income neighborhoods need is more unemployed teenagers.

One of the major problems low-income families face today is cycling on and off welfare. Mothers who leave welfare must often return within a matter of months, because their child-care arrangements have fallen through or because they simply cannot make their bills. Our bill would extend transitional child care benefits from 1 year to 2. We permit States to allow families to keep more outside income before losing benefits, and to save more prior to leaving welfare so that the transition from welfare to work runs more smoothly.

We provide a menu of welfare reform options, but leave it up to the States to decide which combination will best suit their needs. I hope the version that is eventually passed by the Senate will expand State flexibility, not restrict it further. We recognize that our plan is not the be all and end all of welfare reform. I will be open to other options that expand State flexibility and innovation. But I believe this bill contains many good ideas which are not being widely discussed and hope to draw the attention of my colleagues to those ideas.

I commend the efforts of my friend from Iowa and urge other Senators to review our bipartisan effort as we begin debating this contentious issue.●

By Mr. DOLE (for himself, Mr. HATCH, Mr. NICKLES, Mr. THURMOND, Mr. SIMPSON, Mr. BROWN, Mr. KYL, and Mr. GRAMM):

S. 735. A bill to prevent and punish acts of terrorism, and for other purposes; read the first time.

ANTITERRORISM LEGISLATION

Mr. DOLE. Mr. President, America will not be intimidated by the madmen who masterminded last week's vicious and cowardly bomb attack in Oklahoma City.

America will not be paralyzed into inaction by those who have committed this evil deed.

And, yes, justice will be rendered. The guilty will be punished. And America—slowly, but with determination—will begin to heal herself.

Our job today is not to dwell on the past, but to look to the future—to lay the foundation for a comprehensive antiterrorism plan for America. We must take every reasonable step, every responsible action, to reduce the chances that other, similar tragedies will occur elsewhere in the United States.

That is why I am pleased today to join with the chairman of the Judiciary Committee, Senator HATCH, and with my distinguished colleague from Oklahoma, Senator NICKLES, in introducing the Comprehensive Terrorism Prevention Act of 1995.

Many of the provisions of this act were contained in S. 3, the anticrime bill introduced by Senate Republicans last January: Increased penalties for those who conspire to commit firearms and explosives offenses; expanded extradition authority for the attorney general; the Alien Terrorist Removal Act, designed to deport alien terrorists in a prompt manner without disclosing vital national security information; and increased funding for Federal law enforcement, including the FBI.

Today's legislation also contains comprehensive habeas corpus reform, which is something the Senator from Utah, the chairman of the committee, has long sought, which should go a long way in preventing violent criminals from gaming the system—with more delays, more unnecessary appeals, and more grief for the victims of crime and their families.

In fact, the President said justice is going to be swift. I am not certain how swift it is going to be if they can appeal and appeal and appeal in the event they are apprehended, tried and convicted—continued appeals for 7, 8, 10, 15 years in some cases.

During a recent television interview, the President did say we needed strong, comprehensive habeas reform so that those who committed this evil deed will get what they deserve—punishment that is swift, certain, and severe. This legislation will help accomplish this goal.

With respect to international efforts to counter terrorism, the legislation expands efforts to isolate the worst of the rogue regimes: State sponsors of terrorism. It would make it easier to support international antiterrorism efforts. We need to send a strong signal to our allies and our adversaries—if you are with us in fighting the scourge of terrorism, we will try to help—but if you are aiding terrorists and terrorist states, it is no more business as usual.

Finally, this legislation contains many of the reforms sought by President Clinton himself—prohibitions on

fundraising for foreign terrorist organizations; the tagging of plastic explosives to make them more detectable; and amendments to the Fair Credit Reporting Act to ease access to financial and credit reports in terrorism cases.

The bottom line is that fighting terrorism is not, and should not be, a partisan issue. America must stand together—Democrats and Republicans, liberals and conservatives—to confront the terrorist threat wherever it may exist.

And, of course, I look forward to working with President Clinton and with my distinguished colleague, Senator DASCHLE, in refining this proposal, and perhaps considering other worthy proposals, to strengthen America's antiterrorism hand. Today's legislation is not the end but the beginning of the process that hopefully will lead to a strong antiterrorism action plan for our country.

And I have been reminded today that we want to look back at the legislation we pass a year from now or 2 years from now and know that it is just as good then as it may appear to be now. In other words, we should not be carried away because of the emotion of the moment. And I know that under the leadership of the distinguished chairman of the Judiciary Committee that will not happen.

But, Mr. President, as we move forward with legislation, let me add a cautionary note: No legislation can make America completely safe. In a free society, there is no such thing as absolute security. We must work to make our country safer from the terrorist threat, but there are no guarantees that every terrorist, every madman, can be stopped. The American people deserve the straight story, and the straight story is that America is not an impregnable fortress.

Let me also say that there has been a great deal of speculation about the so-called Attorney General guidelines. These guidelines are the internal Justice Department policies that govern if, and when, the FBI can monitor and infiltrate domestic organizations suspected of being engaged in terrorist activities. Some say the guidelines are too restrictive and, in fact, hamstring the FBI. Others argue that the guidelines go too far.

This is a complex issue, and one made more complex and more urgent by the fact that our constitutional liberties are at stake. Before rushing to judgment, we should get all the facts out on the table: Have the guidelines been effective? Do they provide adequate authority to the FBI to monitor the activities of domestic terrorist organizations? Have there been any instances when an FBI agent sought authority to initiate an investigation and this authority was denied? And if so, why?

In my view, we should hear from the law enforcement professionals themselves first before drawing any conclusions. And that is why this legislation asks the Director of the FBI to provide Congress with a detailed report on the adequacy of the guidelines and any other laws regulating the surveillance of suspected terrorist groups operating within the United States. In other words, let us get the facts first and then let us make decisions later. Let us not rush to judgment without all the facts.

Let me say that in this bill—and the Senator from Utah may discuss it also—we left out the provision as far as expanding the authority of the military. That was in the President's request. We have not seen the draft language. But I think that is another area where we want to be very, very careful, before we start bringing the military into law enforcement areas. And I believe my colleague from Utah agrees.

It is reported in the paper this morning ''to allow the military to participate in domestic law enforcement.'' That may sound good on the face of it, but I think there are a lot of pitfalls there and a lot of dangers. We better be certain we look at this before we do anything by statute. So hopefully that will be a subject of extensive hearings in the Judiciary Committee.

Finally, I join all of my Senate colleagues in extending our thoughts and prayers to the good people of Oklahoma City. The self-sacrifice and heroism they have displayed in the past week has been an inspiration to us all. They have been doing their duty. It is now our obligation to lay the groundwork for an America that is more secure for all of her citizens.

As I understand, Mr. President, the Senator from Utah will now speak on this issue.

Mr. HATCH. I wish to congratulate the distinguished majority leader for excellent leadership in this area among so many others. Without his leadership and without his prime sponsorship of this bill, I do not think we would be nearly as far along as we are.

We were both down at the White House yesterday with the President, and we both committed to working with the President to making sure that this bill is everything the President would like to have. In addition, we have added some things that we think will strengthen the bill in many ways including the habeas corpus provision.

Mr. President, I rise today to introduce, along with the distinguished majority leader, the Comprehensive Terrorism Prevention Act of 1995. The Nation continues to mourn the tragic loss of life suffered last week in Oklahoma City.

I want to commend all the men and women who have been involved in the rescue effort. Their courage and devotion to duty stands in stark contrast to this cowardly act of terrorism.

I also salute the swift and efficient work of the Federal, State, and local law enforcement officials who are working tirelessly to solve this crime. We must not rest until all the perpetrators are discovered and punished.

President Clinton was right when he called the people who committed this act ''evil cowards.'' According to the twisted set of values of these individuals, they will push their agenda even when it means killing a 6-month-old infant—or nearly killing a 3-year-old boy like Brandon Denny, whose brother held his hand and wished him well after brain surgery last Thursday. There is no room in a free society for individuals who attempt instead to effect change through violence and who are willing to murder innocent people to make a political statement.

For years, I have been fighting for legislation to strengthen our counterterrorism efforts. Last week's heinous attack only underscores the need to give Federal law enforcement officials the tools to prevent and detect future terrorist attempts. Legislation is needed—and needed now. If those responsible for this act thought they could intimidate the United States, they were dead wrong.

Today, we are introducing the Comprehensive Terrorism Prevention Act of 1995. Our legislation adds several crucial provisions to our Nation's antiterrorism laws, and embodies much of the legislative recommendations called for by President Clinton.

First, our bill enhances the penalties for engaging in certain terrorist acts, and extends the crime of conspiracy to certain terrorist crimes, something that has not been done before, and will make it easier for law enforcement to find these terrorists, ferret them out, and get them sent to court.

Second, our bill will give the President greater tools to fight terrorism on an international level, as well as the domestic level. It provides foreign aid to countries that either aid or provide military equipment to terrorist states, eases the restrictions on the provision of antiterroism assistance to foreign nations, and prohibits the transfer to terrorist states of technology or products which the Secretary of State determines can be used to promote or conduct terrorism.

Third, our bill will give our law enforcement officials and courts the tools they need to remove alien terrorists from our midst without jeopardizing national security or the lives of law enforcement personnel. It allows for a special deportation hearing and in camera, ex parte review by a secret panel of Federal judges when the disclosure in open court of Government evidence would pose a threat to national security.

Fourth, it reforms our habeas corpus laws so that we can be sure that President Clinton's promise that punishment be swift is kept.

Fifth, our bill includes provisions making it a crime to knowingly provide material support to the terrorist functions of groups designated by a Presidential finding to be engaged in terrorist activities.

I am sensitive to the concerns, as is the majority leader, of some that this

provision impinges on freedoms protected by the first amendment. And, the first amendment has no greater champion than the distinguished majority leader and certainly myself. I have worked to ensue that this provision will not violate the Constitution or place inappropriate restrictions on cherished first amendment freedoms. Nothing in this provision prohibits the free exercise of religion or speech, or impinges on the freedom of association. Moreover, nothing in the Constitution provides the right to engage in violence against fellow citizens. Aiding and financing terrorist bombings is not constitutionally protected activity. Additionally, I have to believe that honest donors to any organization would want to know if their contributions were being used for such scurrilous purposes.

Our bill provides for numerous other needed improvements in the law to fight the scourge of terrorism, including the authorization of in additional appropriations—nearly $1.6 billion—to Federal law enforcement to beef up counterterrorism efforts and increasing the maximum rewards permitted for information concerning international terrorism.

I would note that many of the provisions in this bill enjoy broad, bipartisan support and, in several cases, have passed the Senate on previous occasions. Indeed, many of the provisions in this bill have the active support of the Clinton administration. And I believe, as the President reads this bill, he will support the whole bill.

The people of the United States and around the world must know that this is an issue that transcends politics and political parties. Our resolve in this matter must be clear: our response to the terrorist threat, and to acts of terrorism, will be certain, swift, and unified.

Mr. President, ours is a free society. Our liberties, the openness of our institutions, and our freedom of movement are what make America a Nation we are willing to defend. These freedoms are cherished by virtually every American.

But this freedom is not without its costs. Because we are so open, we are vulnerable to those who would take advantage of our liberty to inflict terror on us. The horrific events of last week in Oklahoma City tragically demonstrate the price we pay for our liberty. Indeed, anyone who would do such an act, and call it a defense of liberty, mocks that word.

We must now redouble our efforts to combat terrorism and to protect our citizens. A worthy first step in the enactment of these sound provisions to provide law enforcement with the tools to fight terrorism.

Again, I thank our majority leader. Without him, we would not be this far along. Without him, this bill would not be nearly as good. Without his leadership, it probably would have grave difficulties. But with his leadership and with the work that he and his staff have put in, along with staff of other members of the Judiciary Committee, we have a bill that we believe is sound. We believe it is efficient. We believe it is fair. We believe it takes care of constitutional rights and liberties. And we believe that it will solve the problem in the future and give law enforcement the tools and the teeth in order to take the big bite of out of terrorism worldwide, but especially in our country that needs to be taken.

I urge all of our colleagues to support this legislation and again I thank our distinguished majority leader.

ADDITIONAL COSPONSORS

S. 45

At the request of Mr. FEINGOLD, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 45, a bill to amend the Helium Act to require the Secretary of the Interior to sell Federal real and personal property held in connection with activities carried out under the Helium Act, and for other purposes.

S. 240

At the request of Mr. DOMENICI, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Michigan [Mr. ABRAHAM], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors 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 Massachusetts [Mr. KENNEDY] 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. 434

At the request of Mr. KOHL, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 434, a bill to amend the Internal Revenue Code of 1986 to increase the deductibility of business meal expenses for individuals who are subject to Federal limitations on hours of service.

S. 571

At the request of Mrs. BOXER, the names of the Senator from Washington [Mrs. MURRAY] and the Senator from Maine [Ms. SNOWE] were added as cosponsors of S. 571, a bill to amend title 10, United States Code, to terminate entitlement of pay and allowances for members of the Armed Forces who are sentenced to confinement and a punitive discharge or dismissal, and for other purposes.

S. 726

At the request of Mr. MCCAIN, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 726, a bill to amend the Iran-Iraq Arms Non-Proliferation Act of 1992 to revise the sanctions applicable to violations of that act, and for other purposes.

SENATE RESOLUTION 112—COMMENDING THE SENATE ENROLLING CLERK UPON HIS RETIREMENT

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 112

Whereas Brian Hallen will retire from the United States Senate after almost 30 years of Government service;

Whereas he served the United States Senate for over 20 years; the last 9 years as the Enrolling Clerk;

Whereas his dedication to the United States Senate resulted in the computerization of the engrossing and enrolling process;

Whereas he has performed the duties of his office with remarkable diligence, perseverance, efficiency and intelligence;

Whereas he has faithfully performed his duties serving all Members of the Senate and House of Representatives with great professional integrity; and

Whereas Brian Hallen has earned the respect, affection and esteem of the United States Senate: Now, therefore, be it

Resolved, That the United States Senate commends Brian Hallen for his long, faithful and exemplary service to his country and to the Senate.

SEC. 2. The Secretary shall transmit a copy of this resolution to Brian Hallen.

AMENDMENTS SUBMITTED

THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995; COMMON SENSE PRODUCT LIABILITY REFORM ACT OF 1995

MCCONNELL (AND OTHERS) AMENDMENT NO. 603

Mr. MCCONNELL (for himself, Mr. LIEBERMAN, and Mrs. KASSEBAUM) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

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

TITLE ____—HEALTH CARE LIABILITY REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Health Care Liability Reform and Quality Assurance Act of 1995''.

Subtitle A—Health Care Liability Reform

SEC. ___11. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—The civil justice system of the United States is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients and the problems associated with the current

system are having an adverse impact on the availability of, and access to, health care services and the cost of health care in the United States.

(2) EFFECT ON INTERSTATE COMMERCE.—The health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States affect interstate commerce by contributing to the high cost of health care and premiums for health care liability insurance purchased by participants in the health care system.

(3) EFFECT ON FEDERAL SPENDING.—The health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide such individuals with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reform that is designed to—

(1) ensure that individuals with meritorious health care injury claims receive fair and adequate compensation;

(2) improve the availability of health care service in cases in which health care liability actions have been shown to be a factor in the decreased availability of services; and

(3) improve the fairness and cost-effectiveness of the current health care liability system of the United States to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty and unpredictability in the amount of compensation provided to injured individuals.

SEC. ___12. DEFINITIONS.

As used in this subtitle:

(1) CLAIMANT.—The term ''claimant'' means any person who commences a health care liability action, and any person on whose behalf such an action is commenced, including the decedent in the case of an action brought through or on behalf of an estate.

(2) CLEAR AND CONVINCING EVIDENCE.—The term ''clear and convincing evidence'' means that measure or 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, except that such measure or degree of proof is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) COLLATERAL SOURCE RULE.—The term ''collateral source rule'' means a rule, either statutorily established or established at common law, that prevents the introduction of evidence regarding collateral source benefits or that prohibits the deduction of collateral source benefits from an award of damages in a health care liability action.

(4) ECONOMIC LOSSES.—The term ''economic losses'' means objectively verifiable monetary losses incurred as a result of the provision of (or failure to provide or pay for) health care services or the use of a medical product, including past and future medical expenses, loss of past and future earnings, cost of obtaining replacement services in the home (including child care, transportation, food preparation, and household care), cost of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities. Economic losses are neither noneconomic losses nor punitive damages.

(5) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action against a health care provider, health care professional, health plan, or other defendant, including a right to legal or equitable contribution, indemnity, subrogation, third-party claims, cross claims, or counter-claims, in which the claimant alleges injury related to the provision of, payment for, or the failure to provide or pay for, health care services or medical products, regardless of the theory of liability on which the action is based. Such term does not include a product liability action, except where such an action is brought as part of a broader health care liability action.

(6) HEALTH PLAN.—The term ''health plan'' means any person or entity which is obligated to provide or pay for health benefits under any health insurance arrangement, including any person or entity acting under a contract or arrangement to provide, arrange for, or administer any health benefit.

(7) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by Federal or State laws or regulations to be licensed, registered or certified to provide such services or who is certified to provide health care services pursuant to a program of education, training and examination by an accredited institution, professional board, or professional organization.

(8) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care items or services in a State and that is required by Federal or State laws or regulations to be licensed, registered or certified to engage in the delivery of such items or services.

(9) HEALTH CARE SERVICES.—The term ''health care services'' means any services provided by a health care professional, health care provider, or health plan or any individual working under the supervision of a health care professional, that relate to the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

(10) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a health care liability action.

(11) MEDICAL PRODUCT.—The term ''medical product'' means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or a medical device as defined in section 201(h) of such Act (21 U.S.C. 321(h)), including any component or raw material used therein, but excluding health care services, as defined in paragraph (9).

(12) NONECONOMIC LOSSES.—The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, loss of society or companionship (other than loss of domestic services), and other nonpecuniary losses incurred by an individual with respect to which a health care liability action is brought. Noneconomic losses are neither economic losses nor punitive damages.

(13) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not for compensatory purposes, against a health care professional, health care provider, or other defendant in a health care liability action. Punitive damages are neither economic nor noneconomic damages.

(14) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(15) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. ___13. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (c), this subtitle shall apply with respect to any health care liability action brought in any Federal or State court, except that this subtitle shall not apply to an action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the action.

(b) PREEMPTION.—

(1) IN GENERAL.—The provisions of this subtitle shall preempt State law only to the extent that such law is inconsistent with the limitations contained in such provisions and shall not preempt State law to the extent that such law—

(A) places greater restrictions on the amount of or standards for awarding noneconomic or punitive damages;

(B) places greater limitations on the awarding of attorneys fees for awards in excess of $150,000;

(C) permits a lower threshold for the periodic payment of future damages;

(D) establishes a shorter period during which a health care liability action may be initiated or a more restrictive rule with respect to the time at which the period of limitations begins to run; or

(E) implements collateral source rule reform that either permits the introduction of evidence of collateral source benefits or provides for the mandatory offset of collateral source benefits from damage awards.

(2) RULES OF CONSTRUCTION.—The provisions of this subtitle shall not be construed to preempt any State law that—

(A) permits State officials to commence health care liability actions as a representative of an individual;

(B) permits provider-based dispute resolution;

(C) places a maximum limit on the total damages in a health care liability action;

(D) places a maximum limit on the time in which a health care liability action may be initiated; or

(E) provides for defenses in addition to those contained in this title.

(c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this subtitle shall be construed to—

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

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to actions brought by a foreign nation or a citizen of a foreign nation;

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss an action of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(6) supersede any provision of Federal law.

(d) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this subtitle shall be construed to establish any jurisdiction in the district courts of the United States over health care liability actions on the basis of section 1331 or 1337 of title 28, United States Code.

SEC. ___14. STATUTE OF LIMITATIONS.

A health care liability action that is subject to this title may not be initiated unless

a complaint with respect to such action is filed within the 2-year period beginning on the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered the injury and its cause, except that such an action relating to a claimant under legal disability may be filed within 2 years after the date on which the disability ceases. If the commencement of a health care liability action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

SEC. ___15. REFORM OF PUNITIVE DAMAGES.

(a) LIMITATION.—With respect to a health care liability action, an award for punitive damages may only be made, if otherwise permitted by applicable law, if it is proven by clear and convincing evidence that the defendant—

(1) intended to injure the claimant for a reason unrelated to the provision of health care services;

(2) understood the claimant was substantially certain to suffer unnecessary injury, and in providing or failing to provide health care services, the defendant deliberately failed to avoid such injury; or

(3) acted with a conscious, flagrant disregard of a substantial and unjustifiable risk of unnecessary injury which the defendant failed to avoid in a manner which constitutes a gross deviation from the normal standard of conduct in such circumstances.

(b) PUNITIVE DAMAGES NOT PERMITTED.—Notwithstanding the provisions of subsection (a), punitive damages may not be awarded against a defendant with respect to any health care liability action if no judgment for compensatory damages, including nominal damages (under $500), is rendered against the defendant.

(c) SEPARATE PROCEEDING.—

(1) IN GENERAL.—At the request of any defendant in a health care liability action, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; or

(B) the amount of punitive damages following a determination of punitive liability.

(2) ONLY RELEVANT EVIDENCE ADMISSIBLE.—If a defendant requests a separate proceeding under paragraph (1), evidence relevant only to the claim of punitive damages in a health care liability action, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(d) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—In determining the amount of punitive damages in a health care liability action, the trier of fact shall consider only the following:

(1) The severity of the harm caused by the conduct of the defendant.

(2) The duration of the conduct or any concealment of such conduct by the defendant.

(3) The profitability of the conduct of the defendant.

(4) The number of products sold or medical procedures rendered for compensation, as the case may be, by the defendant of the kind causing the harm complained of by the claimant.

(5) Evidence with respect to awards of punitive or exemplary damages to persons similarly situated to the claimant, when offered by the defendant.

(6) Prospective awards of compensatory damages to persons similarly situated to the claimant.

(7) Evidence with respect to any criminal or administrative penalties imposed on the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(8) Evidence with respect to the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(e) LIMITATION AMOUNT.—The amount of damages that may be awarded as punitive damages in any health care liability action shall not exceed 3 times the amount awarded to the claimant for the economic injury on which such claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and shall not be disclosed to the jury.

(f) RESTRICTIONS PERMITTED.—Nothing in this title shall be construed to imply a right to seek punitive damages where none exists under Federal or State law.

SEC. ___16. PERIODIC PAYMENTS.

With respect to a health care liability action, if the award of future damages exceeds $100,000, the adjudicating body shall, at the request of either party, enter a judgment ordering that future damages be paid on a periodic basis in accordance with the guidelines contained in the Uniform Periodic Payments of Judgments Act, as promulgated by the National Conference of Commissioners on Uniform State Laws in July of 1990. The adjudicating body may waive the requirements of this section if such body determines that such a waiver is in the interests of justice.

SEC. ___17. SCOPE OF LIABILITY.

(a) IN GENERAL.—With respect to punitive and noneconomic damages, the liability of each defendant in a health care liability action shall be several only and may not be joint. Such a defendant shall be liable only for the amount of punitive or noneconomic damages allocated to the defendant in direct proportion to such defendant's percentage of fault or responsibility for the injury suffered by the claimant.

(b) DETERMINATION OF PERCENTAGE OF LIABILITY.—With respect to punitive or noneconomic damages, the trier of fact in a health care liability action shall determine the extent of each party's fault or responsibility for injury suffered by the claimant, and shall assign a percentage of responsibility for such injury to each such party.

SEC. ___18. MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.

(a) IN GENERAL.—With respect to a health care liability action, the total amount of damages received by an individual under such action shall be reduced, in accordance with subsection (b), by any other payment that has been, or will be, made to an individual to compensate such individual for the injury that was the subject of such action.

(b) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) that have been made or that will be made to such individual to pay costs of or compensate such individual for the injury that was the subject of the action; minus

(2) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in paragraph (1).

(c) DETERMINATION OF AMOUNTS FROM COLLATERAL SERVICES.—The reductions required under subsection (b) shall be determined by the court in a pretrial proceeding. At the subsequent trial—

(1) no evidence shall be admitted as to the amount of any charge, payments, or damage for which a claimant—

(A) has received payment from a collateral source or the obligation for which has been assured by a third party; or

(B) is, or with reasonable certainty, will be eligible to receive payment from a collateral source of the obligation which will, with reasonable certainty be assumed by a third party; and

(2) the jury, if any, shall be advised that—

(A) except for damages as to which the court permits the introduction of evidence, the claimant's medical expenses and lost income have been or will be paid by a collateral source or third party; and

(B) the claimant shall receive no award for any damages that have been or will be paid by a collateral source or third party.

SEC. ___19. TREATMENT OF ATTORNEYS' FEES AND OTHER COSTS.

(a) LIMITATION ON AMOUNT OF CONTINGENCY FEES.—

(1) IN GENERAL.—An attorney who represents, on a contingency fee basis, a claimant in a health care liability action may not charge, demand, receive, or collect for services rendered in connection with such action in excess of the following amount recovered by judgment or settlement under such action:

(A) 33⅓ percent of the first $150,000 (or portion thereof) recovered, based on after-tax recovery, plus

(B) 25 percent of any amount in excess of $150,000 recovered, based on after-tax recovery.

(2) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under paragraph (1) shall be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(b) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. ___20. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) ESTABLISHMENT BY STATES.—Each State is encouraged to establish or maintain alternative dispute resolution mechanisms that promote the resolution of health care liability claims in a manner that—

(1) is affordable for the parties involved in the claims;

(2) provides for the timely resolution of claims; and

(3) provides the parties with convenient access to the dispute resolution process.

(b) GUIDELINES.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall develop guidelines with respect to alternative dispute resolution mechanisms that may be established by States for the resolution of health care liability claims. Such guidelines shall include procedures with respect to the following methods of alternative dispute resolution:

(1) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (c), result in a final decision as to facts, law, liability or damages. The parties may elect binding arbitration.

(2) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(3) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement.

If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(4) EARLY OFFER AND RECOVERY MECHANISM.—The use of early offer and recovery mechanisms under which a health care provider, health care organization, or any other alleged responsible defendant may offer to compensate a claimant for his or her reasonable economic damages, including future economic damages, less amounts available from collateral sources.

(5) CERTIFICATE OF MERIT.—The requirement that a claimant in a health care liability action submit to the court before trial a written report by a qualified specialist that includes the specialist's determination that, after a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(6) NO FAULT.—The use of a no-fault statute under which certain health care liability actions are barred and claimants are compensated for injuries through their health plans or through other appropriate mechanisms.

(c) FURTHER REDRESS.—

IN GENERAL.—The extent to which any party may seek further redress (subsequent to a decision of an alternative dispute resolution method) concerning a health care liability claim in a Federal or State court shall be dependent upon the methods of alternative dispute resolution adopted by the State.

(d) TECHNICAL ASSISTANCE AND EVALUATIONS.—

(1) TECHNICAL ASSISTANCE.—The Attorney General may provide States with technical assistance in establishing or maintaining alternative dispute resolution mechanisms under this section.

(2) EVALUATIONS.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall monitor and evaluate the effectiveness of State alternative dispute resolution mechanisms established or maintained under this section.

SEC. ___21. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the injury occurred before the date of enactment of this title.

Subtitle B—Protection of the Health and Safety of Patients

SEC. ___31. ADDITIONAL RESOURCES FOR STATE HEALTH CARE QUALITY ASSURANCE AND ACCESS ACTIVITIES.

Each State shall require that not less than 50 percent of all awards of punitive damages resulting from all health care liability actions in that State, if punitive damages are otherwise permitted by applicable law, be used for activities relating to—

(1) the licensing, investigating, disciplining, and certification of health care professionals in the State; and

(2) the reduction of malpractice-related costs for health care providers volunteering to provide health care services in medically underserved areas.

SEC. ___32. QUALITY ASSURANCE, PATIENT SAFETY, AND CONSUMER INFORMATION.

(a) ADVISORY PANEL.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this title, the Administrator of the Agency for Health Care Policy and Research (hereafter referred to in this section as the ''Administrator'') shall establish an advisory panel to coordinate and evaluate, methods, procedures, and data to enhance the quality, safety, and effectiveness of health care services provided to patients.

(2) PARTICIPATION.—In establishing the advisory panel under paragraph (1), the Administrator shall ensure that members of the panel include representatives of public and private sector entities having expertise in quality assurance, risk assessment, risk management, patient safety, and patient satisfaction.

(3) OBJECTIVES.—In carrying out the duties described in this section, the Administrator, acting through the advisory panel established under paragraph (1), shall conduct a survey of public and private entities involved in quality assurance, risk assessment, patient safety, patient satisfaction, and practitioner licensing. Such survey shall include the gathering of data with respect to—

(A) performance measures of quality for health care providers and health plans;

(B) developments in survey methodology, sampling, and audit methods;

(C) methods of medical practice and patterns, and patient outcomes; and

(D) methods of disseminating information concerning successful health care quality improvement programs, risk management and patient safety programs, practice guidelines, patient satisfaction, and practitioner licensing.

(b) GUIDELINES.—Not later than 2 years after the date of enactment of this title, the Administrator shall, in accordance with chapter 5 of title 5, United States Code, establish health care quality assurance, patient safety and consumer information guidelines. Such guidelines shall be modified periodically when determined appropriate by the Administrator. Such guidelines shall be advisory in nature and not binding.

(c) REPORTS.—

(1) INITIAL REPORT.—Not later than 6 months after the date of enactment of this title, the Administrator shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives, a report that contains—

(A) data concerning the availability of information relating to risk management, quality assessment, patient safety, and patient satisfaction;

(B) an estimation of the degree of consensus concerning the accuracy and content of the information available under subparagraph (A);

(C) a summary of the best practices used in the public and private sectors for disseminating information to consumers; and

(D) an evaluation of the National Practitioner Data Bank (as established under the Health Quality Improvement Act of 1986), for reliability and validity of the data and the effectiveness of the Data Bank in assisting hospitals and medical groups in overseeing the quality of practitioners.

(2) INTERIM REPORT.—Not later than 1 year after the date of enactment of this title, the Administrator shall prepare and submit to the Committees referred to in paragraph (1) a report, based on the results of the advisory panel survey conducted under subsection (a)(3), concerning—

(A) the consensus of indicators of patient safety and risk;

(B) an assessment of the consumer perspective on health care quality that includes an examination of—

(i) the information most often requested by consumers;

(ii) the types of technical quality information that consumers find compelling;

(iii) the amount of information that consumers consider to be sufficient and the amount of such information considered overwhelming; and

(iv) the manner in which such information should be presented;

and recommendations for increasing the awareness of consumers concerning such information;

(C) proposed methods, building on existing data gathering and dissemination systems, for ensuring that such data is available and accessible to consumers, employers, hospitals, and patients;

(D) the existence of legal, regulatory, and practical obstacles to making such data available and accessible to consumers;

(E) privacy or proprietary issues involving the dissemination of such data;

(F) an assessment of the appropriateness of collecting such data at the Federal or State level;

(G) an evaluation of the value of permitting consumers to have access to information contained in the National Practitioner Data Bank and recommendations to improve the reliability and validity of the information; and

(H) the reliability and validity of data collected by the State medical boards and recommendations for developing investigation protocols.

(3) ANNUAL REPORT.—Not later than 1 year after the date of the submission of the report under paragraph (2), and each year thereafter, the Administrator shall prepare and submit to the Committees referred to in paragraph (1) a report concerning the progress of the advisory panel in the development of a consensus with respect to the findings of the panel and in the development and modification of the guidelines required under subsection (b).

(4) TERMINATION.—The advisory panel shall terminate on the date that is 3 years after the date of enactment of this title.

Subtitle C—Severability

SEC. ___41. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

THOMAS AMENDMENT NO. 604

Mr. THOMAS proposed an amendment to amendment No. 603 proposed by Mr. MCCONNELL to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

At the appropriate place in the amendment insert the following new section:

SEC. . SPECIAL PROVISION FOR CERTAIN OBSTETRIC SERVICES.

(a) IN GENERAL.—In the case of a health care liability claim relating to services provided during labor or the delivery of a baby, if the health care professional or health care provider against whom the claim is brought did not previously treat the claimant for the pregnancy, the trier of the fact may not find that such professional or provider committed malpractice and may not assess damages against such professional or provider unless the malpractice is proven by clear and convincing evidence.

(b) APPLICABILITY TO GROUP PRACTICES OR AGREEMENTS AMONG PROVIDERS.—For purposes of subsection (a), a health care professional shall be considered to have previously treated an individual for a pregnancy if the professional is a member of a group practice in which any of whose members previously treated the individual for the pregnancy or is providing services to the individual during

labor or the delivery of a baby pursuant to an agreement with another professional.

WELLSTONE AMENDMENT NO. 605

Mr. WELLSTONE proposed an amendment to amendment No. 603 proposed by Mr. MCCONNELL to the amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

In section ___32(c)(1) of the amendment, strike subparagraph (B) and all that follows through the end of the section and insert the following:

(B) an estimation of the degree of consensus concerning the accuracy and content of the information available under subparagraph (A); and

(C) a summary of the best practices used in the public and private sectors for disseminating information to consumers.

(2) INTERIM REPORT.—Not later than 1 year after the date of enactment of this title, the Administrator shall prepare and submit to the Committees referred to in paragraph (1) a report, based on the results of the advisory panel survey conducted under subsection (a)(3), concerning—

(A) the consensus of indicators of patient safety and risk;

(B) an assessment of the consumer perspective on health care quality that includes an examination of—

(i) the information most often requested by consumers;

(ii) the types of technical quality information that consumers find compelling;

(iii) the amount of information that consumers consider to be sufficient and the amount of such information considered overwhelming; and

(iv) the manner in which such information should be presented;

and recommendations for increasing the awareness of consumers concerning such information;

(C) proposed methods, building on existing data gathering and dissemination systems, for ensuring that such data is available and accessible to consumers, employers, hospitals, and patients;

(D) the existence of legal, regulatory, and practical obstacles to making such data available and accessible to consumers;

(E) privacy or proprietary issues involving the dissemination of such data;

(F) an assessment of the appropriateness of collecting such data at the Federal or State level; and

(G) the reliability and validity of data collected by the State medical boards and recommendations for developing investigation protocols.

(3) ANNUAL REPORT.—Not later than 1 year after the date of the submission of the report under paragraph (2), and each year thereafter, the Administrator shall prepare and submit to the Committees referred to in paragraph (1) a report concerning the progress of the advisory panel in the development of a consensus with respect to the findings of the panel and in the development and modification of the guidelines required under subsection (b).

(4) TERMINATION.—The advisory panel shall terminate on the date that is 3 years after the date of enactment of this title.

SEC. ___33. REQUIRING REPORTS ON MEDICAL MALPRACTICE DATA.

(a) IN GENERAL.—Section 421 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131) is amended—

(1) by striking subsections (a) and (b);

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(3) by inserting before subsection (d) (as redesignated by paragraph (2)) the following subsections:

''(a) IN GENERAL.—

''(1) REQUIREMENT OF REPORTING.—Subject to paragraphs (2) and (3), each person or entity which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 424, information respecting the payment and circumstances of the payment.

''(2) PAYMENTS BY PRACTITIONERS.—Except as provided in paragraph (3), the persons to whom paragraph (1) applies include a physician, or other licensed health care practitioner, who makes a payment described in such paragraph and whose act or omission is the basis of the action or claim involved.

''(3) REFUND OF FEES.—With respect to a physician, or other licensed health care practitioner, whose act or omission is the basis of an action or claim described in paragraph (1), such paragraph shall not apply to a payment described in such paragraph if—

''(A) the payment is made by the physician or practitioner or entity as a refund of fees for the health services involved; and

''(B) the payment does not exceed the amount of the original charge for the health services.

''(b) INFORMATION TO BE REPORTED.—The information to be reported under subsection (a) by a person or entity regarding a payment and an action or claim includes the following:

''(1)(A)(i) The name of each physician or other licensed health care practitioner whose act or omission is the basis of the action or claim.

''(ii) To the extent authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.), the social security account number assigned to the physician or practitioner.

''(B) If the physician or practitioner may not be identified for purposes of subparagraph (A)—

''(i) a statement of such fact and an explanation of the inability to make the identification; and

''(ii) the name of the hospital or other health services organization for whose benefit the payment was made.

''(2) The amount of the payment.

''(3) The name (if known) of any hospital or other health services organization with which the physician or practitioner is affiliated or associated.

''(4)(A) A statement describing the act or omission, and injury or illness, upon which the action or claim is based.

''(B) A statement by the physician or practitioner regarding the action or claim, if the physician or practitioner elects to make such a statement.

''(C) If the payment was made without the consent of the physician or practitioner, a statement specifying such fact and the reasons underlying the decision to make the payment without such consent.

''(5) Such other information as the Secretary determines is required for appropriate interpretation of information reported under this subsection.

''(c) CERTAIN REPORTING CRITERIA; NOTICE TO PRACTITIONERS.—

''(1) REPORTING CRITERIA.—The Secretary shall establish criteria regarding statements described in subsection (b)(4). Such criteria shall include—

''(A) criteria regarding the length of each of the statements;

''(B) criteria for entities regarding the notice required by paragraph (2), including criteria regarding the date by which—

''(i) the entity is to provide the notice; and

''(ii) the physician or practitioner is to submit the statement described in subsection (b)(4)(B) to the entity; and

''(C) such other criteria as the Secretary determines appropriate.

''(2) NOTICE OF OPPORTUNITY TO MAKE A STATEMENT.—In the case of an entity that prepares a report under subsection (a)(1) regarding a payment and an action or claim, the entity shall notify any physician or practitioner identified under subsection (b)(1)(A) of the opportunity to make a statement under subsection (b)(4)(B).''; and

(3) by adding at the end the following new subsection:

''(f) DEFINITIONS OF ENTITY AND PERSON.—For purposes of this section—

''(1) the term 'entity' includes the Federal Government, any State or local government, and any insurance company or other private organization; and

''(2) the term 'person' includes a Federal officer or a Federal employee.''.

(b) DEFINITION OF HEALTH SERVICES ORGANIZATION.—Section 431 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11151) is amended—

(1) by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively; and

(2) by inserting after paragraph (4) the following paragraph:

''(5) The term 'health services organization' means an entity that, directly or through contracts or other arrangements, provides health services. Such term includes a hospital, health maintenance organization or another health plan organization, and a health care entity.''.

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.) is amended—

(A) in section 411(a)(1), in the matter preceding subparagraph (A), by striking ''431(9)'' and inserting ''431(10)'';

(B) in section 421(d) (as redesignated by subsection (a)(2)), by inserting ''person or'' before ''entity'';

(C) in section 422(a)(2)(A), by inserting before the comma at the end the following: '', and (to the extent authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.)) the social security account number assigned to the physician''; and

(D) in section 423(a)(3)(A), by inserting before the comma at the end the following: '', and (to the extent authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.)) the social security account number assigned to the physician or practitioner''.

(2) APPLICABILITY OF REQUIREMENTS TO FEDERAL ENTITIES.—

(A) APPLICABILITY TO FEDERAL FACILITIES AND PHYSICIANS.—Section 423 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11133) is amended by adding at the end the following subsection:

''(e) APPLICABILITY TO FEDERAL FACILITIES AND PHYSICIANS.—

''(1) IN GENERAL.—Subsection (a) applies to Federal health facilities (including hospitals) and actions by such facilities regarding the competence or professional conduct of physicians employed by the Federal Government to the same extent and in the same manner as such subsection applies to health care entities and professional review actions.

''(2) RELEVANT BOARD OF MEDICAL EXAMINERS.—For purposes of paragraph (1), the Board of Medical Examiners to which a Federal health facility is to report is the Board of Medical Examiners of the State within which the facility is located.''.

(B) APPLICABILITY TO FEDERAL HOSPITALS.—Section 425 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11135) is

amended by adding at the end the following subsection:

''(d) APPLICABILITY TO FEDERAL HOSPITALS.—Subsections (a), (b), and (c) apply to hospitals under the jurisdiction of the Federal Government to the same extent and in the same manner as such subsections apply to other hospitals.''.

(C) MEMORANDA OF UNDERSTANDING.—Section 432 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11152) is amended—

(i) by striking subsection (b); and

(ii) by redesignating subsection (c) as subsection (b).

SEC. ___34. ADDITIONAL PROVISIONS REGARDING ACCESS TO INFORMATION; MISCELLANEOUS PROVISIONS.

(a) ACCESS TO INFORMATION.—Section 427(a) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137(a)) is amended to read as follows:

''(a) ACCESS REGARDING LICENSING, EMPLOYMENT, AND CLINICAL PRIVILEGES.—The Secretary (or the agency designated under section 424(b)) shall, on request, provide information reported under this part concerning a physician or other licensed health care practitioner to—

''(1) State licensing boards; and

''(2) hospitals and other health services organizations—

''(A) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner; or

''(B) to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.''.

(b) ADDITIONAL DISCLOSURES OF INFORMATION.—Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended by adding at the end the following subsection:

''(e) AVAILABILITY OF INFORMATION TO PUBLIC.—

''(1) REPORTS, GUIDELINES AND REGULATIONS.—

''(A) INITIAL REPORT.—Not later than 3 months after the date of enactment of the Health Care Liability Reform and Quality Assurance Act of 1995, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report that contains recommendations for improving the reliability and validity of such information.

''(B) GUIDELINES AND REGULATIONS.—Not later than 180 days after the date of enactment of the Health Care Liability Reform and Quality Assurance Act of 1995, the Secretary shall establish guidelines and promulgate regulations providing for the dissemination of information to the public under sections 421, 422, and 423 of the Health Care Quality Improvement Act of 1986. With respect to such guidelines and regulations the Secretary shall determine whether information respecting small payments reported under section 421 shall be disclosed to the public. In addition, the Secretary shall ensure that such information shall include information on the expected norm for information reported under such section 421 for a physician's or practitioner's specialty. Such expected norm shall be based on assessments that are clinically and statistically valid as determined by the Secretary, in consultation with individuals with expertise in the area of medical malpractice, consumer representatives, and certain other interested parties that the Secretary determines are appropriate.''.

(c) CONFORMING AMENDMENTS.—Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended—

(1) in subsection (b)(1), in the first sentence, by striking ''Information reported'' and inserting ''Except for information disclosed under subsection (e), information reported''; and

(2) in the heading for the section, by striking ''miscellaneous provisions'' and inserting ''additional provisions regarding access to information; miscellaneous provisions''.

KENNEDY AMENDMENTS NOS. 606–607

(Ordered to lie on the table.)

Mr. KENNEDY submitted two amendments intended to be proposed by him to amendment No. 603 proposed by Mr. MCCONNELL to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

AMENDMENT NO. 606

Strike the material from page 8, line 20 through page 10, line 17, and insert in lieu thereof the following:

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this subtitle shall apply with respect to any health care liability action brought in any Federal or State court, except that this subtitle shall not apply to an action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the action.

(b) PREEXEMPTION.—The provisions of this subtitle shall not be construed to preempt any state law, but shall govern any question with respect to which there is no state law.

AMENDMENT NO. 607

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medical Liability Reform Act of 1995''.

TITLE I—LIABILITY REFORM

SEC. 101. FEDERAL TORT REFORM.

(a) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in section 102, this title shall apply with respect to any medical malpractice liability action brought in any State or Federal court, except that this title shall not apply to a claim or action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the claim or action.

(2) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this title shall be construed to—

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

(B) waive or affect any defense of sovereign immunity asserted by the United States;

(C) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(D) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(E) 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.

(3) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this title shall be construed to establish any jurisdiction in the district courts of the United States over medical malpractice liability actions on the basis of section 1331 or 1337 of title 28, United States Code.

(b) DEFINITIONS.—In this Act, the following definitions apply:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of medical malpractice claims in a manner other than through medical malpractice liability actions.

(2) CLAIMANT.—The term ''claimant'' means any person who alleges a medical malpractice claim, and any person on whose behalf such a claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.

(3) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by the laws or regulations of the State to be licensed or certified by the State to provide such services in the State.

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care services in a State and that is required by the laws or regulations of the State to be license or certified by the State to engage in the delivery of such services in the State.

(5) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a medical malpractice liability action or a medical malpractice claim.

(6) MEDICAL MALPRACTICE LIABILITY ACTION.—The term ''medical malpractice liability action'' means a cause of action brought in a State or Federal court against a health care provider or health care professional by which the plaintiff alleges a medical malpractice claim.

(7) MEDICAL MALPRACTICE CLAIM.—The term ''medical malpractice claim'' means a claim brought against a health care provider or health care professional in which a claimant alleges that injury was caused by the provision of (or the failure to provide) health care services, except that such term does not include—

(A) any claim based on an allegation of an intentional tort;

(B) any claim based on an allegation that a product is defective that is brought against any individual or entity that is not a health care professional or health care provider; or

(C) any claim brought pursuant to any remedies or enforcements provision of law.

SEC. 102. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) APPLICATION TO MALPRACTICE CLAIMS UNDER PLANS.—Prior to or immediately following the commencement of any medical malpractice action, the parties shall participate in the alternative dispute resolution system administered by the State under subsection (b). Such participation shall be in lieu of any other provision of Federal or State law or any contractual agreement made by or on behalf of the parties prior to the commencement of the medical malpractice action.

(b) ADOPTION OF MECHANISM BY STATE.—Each State shall—

(1) maintain or adopt at least one of the alternative dispute resolution methods satisfying the requirements specified under subsection (c) and (d) for the resolution of medical malpractice claims arising from the provision of (or failure to provide) health care services to individuals enrolled to a health plan; and

(2) clearly disclose to enrollees (and potential enrollees) the availability and procedures for consumer grievances, including a description of the alternative dispute resolution method or methods adopted under this subsection.

(c) SPECIFICATION OF PERMISSIBLE ALTERNATIVE DISPUTE RESOLUTION METHODS.—

(1) IN GENERAL.—The Board shall, by regulation, development alternative dispute resolution methods for the use by States in resolving medical malpractice claims under subsection (a). Such methods shall include at least the following:

(A) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (d), result in a final decision as to facts, law, liability or damages.

(B) CLAIMANT-REQUESTED BINDING ARBITRATION.—For claims involving a sum of money that falls below a threshold amount set by the Board, the use of arbitration not subject to subsection (d). Such binding arbitration shall be at the sole discretion of the claimant.

(C) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(D) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement. If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(E) CERTIFICATE OF MERIT.—The requirement that a medical malpractice plaintiff submit to the court before trial a written report by a qualified specialist that includes the specialist's determination that, after a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(2) STANDARDS FOR ESTABLISHING METHODS.—In developing alternative dispute resolution methods under paragraph (1), the Board shall assure that the methods promote the resolution of medical malpractice claims in a manner that—

(A) is affordable for the parties involved;

(B) provides for timely resolution of claims;

(C) provides for the consistent and fair resolution of claims; and

(D) provides for reasonably convenient access to dispute resolution for individuals enrolled in plans.

(3) WAIVER AUTHORITY.—Upon application of a State, the Board may grant the State the authority to fulfill the requirement of subsection (b) by adopting a mechanism other than a mechanism established by the Board pursuant to this subsection, except that such mechanism must meet the standards set forth in paragraph (2).

(d) FURTHER REDRESS.—Except with respect to the claimant-requested binding arbitration method set forth in subsection (c)(1)(B), and notwithstanding any other provision of a law or contractual agreement, a plan enrollee dissatisfied with the determination reached as a result of an alternative dispute resolution method applied under this section may, after the final resolution of the enrollee's claim under the method, bring a cause of action to seek damages or other redress with respect to the claim to the extent otherwise permitted under State law. The results of any alternative dispute resolution procedure are inadmissible at any subsequent trial, as are all statements, offers, and other communications made during such procedures, unless otherwise admissible under State law.

SEC. 103. LIMITATION ON AMOUNT OF ATTORNEY'S CONTINGENCY FEES.

(a) IN GENERAL.—An attorney who represents, on a contingency fee basis, a plaintiff in a medical malpractice liability action may not charge, demand, receive, or collect for services rendered in connection with such action (including the resolution of the claim that is the subject of the action under any alternative dispute resolution system) in excess of—

(1) 33⅓ percent of the first $150,000 of the total amount recovered by judgment or settlement in such action; plus

(2) 25 percent of any amount recovered above the amount described in paragraph (1);

unless otherwise determined under State law. Such amount shall be computed after deductions are made for all the expenses associated with the claim other than those attributable to the normal operating expenses of the attorney.

(b) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under subsection (a) may, in the discretion of the court, be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(c) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. 104. REDUCTION OF AWARDS FOR RECOVERY FROM COLLATERAL SOURCES.

(a) REDUCTION OF AWARD.—The total amount of damages recovered by a plaintiff in a medical malpractice liability action shall be reduced by an amount that equals—

(1) the amount of any payment which the plaintiff has received or to which the plaintiff is presently entitled on account of the same injury for which the damages are awarded, including payment under—

(A) Federal or State disability or sickness programs;

(B) Federal, State, or private health insurance programs;

(C) private disability insurance programs;

(D) employer wage continuation programs; and

(E) any other program, if the payment is intended to compensate the plaintiff for the same injury for which damages are awarded; less

(2) the amount of any premiums or any other payments that the plaintiff has paid to be eligible to receive the payment described in paragraph (1) and any portion of the award subject to a subrogation lien or claim.

(b) SUBROGATION.—The court may reduce a subrogation lien or claim described in subsection (a)(2) by an amount representing reasonable costs incurred in securing the award subject to the lien or claim.

(c) INAPPLICABILITY OF SECTION.—This section shall not apply to any case in which the court determines that the reduction of damages pursuant to subsection (a) would compound the effect of any State law limitation on damages so as to render the plaintiff less than fully compensated for his or her injuries.

SEC. 105. PERIODIC PAYMENT OF AWARDS.

(a) IN GENERAL.—A party to a medical malpractice liability action may petition the court to instruct the trier of fact to award any future damages on an appropriate periodic basis. If the court, in its discretion, so instructs the trier of fact, and damages are awarded on a periodic basis, the court may require the defendant to purchase an annuity or other security instrument (typically based on future damages discounted to present value) adequate to assure payments of future damages.

(b) FAILURE OR INABILITY TO PAY.—With respect to an award of damages described in subsection (a), if a defendant fails to make payments in a timely fashion, or if the defendant becomes or is at risk of becoming insolvent, upon such a showing the claimant may petition the court for an order requiring that remaining balance be discounted to present value and paid to the claimant in a lump-sum.

(c) MODIFICATION OF PAYMENT SCHEDULE.—The court shall retain authority to modify the payment schedule based on changed circumstances.

(d) FUTURE DAMAGES DEFINED.—As used in this section, the term ''future damages'' means any economic or noneconomic loss other than that incurred or accrued as of the time of judgment.

SEC. 106. CONSTRUCTION.

Nothing in this title shall be construed to preempt any State law that sets a maximum limit on total damages.

PART 2—OTHER PROVISIONS RELATING TO MEDICAL MALPRACTICE LIABILITY

SEC. 201. STATE MALPRACTICE REFORM DEMONSTRATION PROJECTS.

(a) ESTABLISHMENT.—The Secretary shall award grants to States for the establishment of malpractice reform demonstration projects in accordance with this section. Each such project shall be designed to assess the fairness and effectiveness of one or more of the following models:

(1) No-fault liability.

(2) Enterprise liability.

(3) Practice guidelines.

(b) DEFINITIONS.—For purposes of this section:

(1) MEDICAL ADVERSE EVENT.—The term ''medical adverse event'' means an injury that is the result of medical management as opposed to a disease process that creates disability lasting at least one month after discharge, or that prolongs a hospitalization for more than one month, and for which compensation is available under a no-fault medical liability system established under this section.

(2) NO-FAULT MEDICAL LIABILITY SYSTEMS.—The terms ''no-fault medical liability system'' and ''system'' mean a system established by a State receiving a grant under this section which replaces the common law tort liability system for medical injuries with respect to certain qualified health care organizations and qualified insurers and which meets the requirements of this section.

(3) PROVIDER.—The term ''provider'' means physician, physician assistant, or other individual furnishing health care services in affiliation with a qualified health care organization.

(4) QUALIFIED HEALTH CARE ORGANIZATION.—The term ''qualified health care organization'' means a hospital, a hospital system, a managed care network, or other entity determined appropriate by the Secretary which elects in a State receiving a grant under this section to participate in a no-fault medical liability system and which meets the requirements of this section.

(5) QUALIFIED INSURER.—The term ''qualified insurer'' means a health care malpractice insurer, including a self-insured qualified health care organization, which elects in a State receiving a grant under this section to participate in a no-fault medical liability system and which meets the requirements of this section.

(6) ENTERPRISE LIABILITY.—The term ''enterprise liability'' means a system in which State law imposes malpractice liability on

the health plan in which a physician participates in place of personal liability on the physician in order to achieve improved quality of care, reductions in defensive medical practices, and better risk management.

(7) PRACTICE GUIDELINES.—The term ''practice guidelines'' means guidelines established by the Agency for Health Care Policy and Research pursuant to the Public Health Service Act or this Act.

(c) APPLICATIONS BY STATES.—

(1) IN GENERAL.—Each State desiring to establish a malpractice reform demonstration project shall submit an application to the Secretary at such time and in such manner as the Secretary shall require.

(2) CONTENTS OF APPLICATION.—An application under paragraph (1) shall include—

(A) an identification of the State agency or agencies that will administer the demonstration project and be the grant recipient of funds for the State;

(B) a description of the manner in which funds granted to a State will be expended and a description of fiscal control, accounting, and audit procedures to ensure the proper dispersal of and accounting for funds received under this section; and

(C) such other information as the Secretary determines appropriate.

(3) CONSIDERATION OF APPLICATIONS.—In reviewing all applications received from States desiring to establish malpractice demonstration projects under paragraph (1), the Secretary shall consider—

(A) data regarding medical malpractice and malpractice litigation patterns in each State;

(B) the contributions that any demonstration project will make toward reducing malpractice and costs associated with health care injuries;

(C) diversity among the populations serviced by the systems;

(D) geographic distribution; and

(E) such other criteria as the Secretary determines appropriate.

(d) EVALUATION AND REPORTS.—

(1) BY THE STATES.—Each State receiving a grant under this section shall conduct ongoing evaluations of the effectiveness of any demonstration project established in such State and shall submit an annual report to the Secretary concerning the results of such evaluations at such times and in such manner as the Secretary shall require.

(2) BY THE SECRETARY.—The Secretary shall submit an annual report to Congress concerning the fairness and effectiveness of the demonstration projects conducted under this section. Such report shall analyze the reports received by the Secretary under paragraph (1).

(e) FUNDING.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) LIMITATIONS ON EXPENDITURES.—

(A) ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the amount of each grant awarded to a State under this section may be used for administrative expenses.

(B) WAIVER OF COST LIMITATIONS.—The limitation under subparagraph (A) may be waived as determined appropriate by the Secretary.

(f) ELIGIBILITY FOR NO-FAULT DEMONSTRATION.—A State is eligible to receive a no-fault liability demonstration grant if the application of the State under subsection (c) includes—

(1) an identification of each qualified health care organization selected by the State to participate in the system, including—

(A) the location of each organization;

(B) the number of patients generally served by each organization;

(C) the types of patients generally served by each organization;

(D) an analysis of any characteristics of each organization which makes such organization appropriate for participation in the system;

(E) whether the organization is self-insured for malpractice liability; and

(F) such other information as the Secretary determines appropriate;

(2) an identification of each qualified insurer selected by the State to participate in the system, including—

(A) a schedule of the malpractice insurance premiums generally charged by each insurer under the common law tort liability system; and

(B) such other information as the Secretary determines appropriate;

(3) a description of the procedure under which qualified health care organizations and insurers elect to participate in the system;

(4) a description of the system established by the State to assure compliance with the requirements of this section by each qualified health care organization and insurer; and

(5) a description of procedures for the preparation and submission to the State of an annual report by each qualified health care organization and qualified insurer participating in a system that shall include—

(A) a description of activities conducted under the system during the year; and

(B) the extent to which the system exceeded or failed to meet relevant performance standards including compensation for and deterrence of medical adverse events.

(g) ELIGIBILITY FOR ENTERPRISE LIABILITY DEMONSTRATION.—A State is eligible to receive an enterprise liability demonstration grant if the State—

(1) has entered into an agreement with a health plan (other than a fee-for-service plan) operating in the State under which the plans assumes legal liability with respect to any medical malpractice claim arising from the provision of (or failure to provide) services under the plan by any physician participating in the plan; and

(2) has provided that, under the law of the State, a physician participating in a plan that has entered into an agreement with the State under paragraph (1) may not be liable in damages or otherwise for such a claim and the plan may not require such physician to indemnify the plan for any such liability.

(h) ELIGIBILITY FOR PRACTICE GUIDELINES DEMONSTRATION.—A State is eligible to receive a practice guidelines demonstration grant if the law of the State provides that in the resolution of any medical malpractice action, compliance or non-compliance with an appropriate practice guideline shall be admissible at trial as a rebuttable presumption regarding medical negligence.

Mr. KENNEDY. Mr. President, at an appropriate time on Monday, I intend to offer two second-degree amendments to the McConnell amendment. I have already described them briefly; one would clarify that this bill does not preempt State law, while the other would be a complete substitute consisting of the malpractice subtitle of the Health Care Reform Act favorably reported by the Labor Committee last year.

I will file them at this time so that they are available for review by the membership.

SNOWE AMENDMENT NO. 608

Ms. SNOWE proposed an amendment to amendment No. 603 proposed by Mr. MCCONNELL to the amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

On p. 14, line 22, insert:

In section 15 of the amendment, strike subsection (e) and insert the following new subsection:

(e) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in a health care liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

KYL AMENDMENT NO. 609

Mr. KYL proposed an amendment to amendment No. 603 proposed by Mr. MCCONNELL to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

SEC. . FAIR COMPENSATION FOR NONECONOMIC LOSSES AND PUNITIVE DAMAGES.

(a) FULL COMPENSATION FOR NONECONOMIC LOSSES.—Notwithstanding any other provision of this Act, an attorney who represents, on a contingency fee basis, a claimant in a civil action in a Federal or State court may not charge, demand, receive, or collect for services rendered in connection with such action on any amount recovered by judgment or settlement under such action for noneconomic losses in excess of 25 percent of the first $250,000 (or portion thereof) recovered, based on after-tax recovery.

(b) ATTORNEY FEES FOR PUNITIVE DAMAGES.—With respect to any award or settlement for punitive damages, an attorney's fee, if any, received by an attorney who represents, on a contingency fee basis, a claimant in a civil action in a Federal or State court shall be established by the court based on the work performed by the attorney, and shall be ethical and reasonable. It shall be a rebuttable presumption that an ethical and reasonable attorney's fee in such an action is 25 percent of such award for punitive damages.

(c) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of losses or damages, whether through judgment or settlement.

COLORADO RIVER BASIN SALINITY CONTROL AMENDMENTS ACT

DOMENICI AMENDMENT NO. 610

Mr. KYL (for Mr. DOMENICI) proposed an amendment to the bill (S. 523) to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes; as follows:

On page 7, strike ''such paragraph'' on line 1, and insert the following: ''such paragraph.

Notwithstanding subsection (b), the Secretary may implement the program under paragraph 202(a)(6) only to the extent and in such amounts as are provided in advance in appropriations Acts.''

NOTICE OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROTH. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Government Affairs, will hold hearings on the Navy T–AO–187 *Kaiser* class oiler contract.

This hearing will take place on Tuesday, May 2, 1995 at 10 a.m. and on Thursday, May 4 at 10 a.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Harold Damelin of the subcommittee staff at 224–3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GORTON. 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 Thursday, April 27, 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 approve the creation and jurisdiction of a new subcommittee.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GORTON. 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 Thursday, April 27, 1995, for purposes of conducting a Full Committee hearing which is scheduled to begin at 9:45 a.m. The purpose of this hearing is to consider S. 537 and H.R. 402, to amend the Alaska Native Claims Settlement Act.

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

COMMITTEE ON FINANCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet on Thursday, April 27, 1995, beginning at 9:30 a.m. in room SD–215, to conduct our final hearing on welfare reform.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 27, 1995, at 10 a.m. to hold a hearing on The Future of NATO.

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

COMMITTEE ON THE JUDICIARY

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, April 27, 1995 at 8 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, April 27, 1995 at 2 p.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to hold a hearing on Thursday, April 27, 1995, at 9:30 a.m. The focus of the hearing is the Small Business Administration's 7(a) Business Loan Program.

For further information, please contact Paul Cooksey at 224–5175.

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

SUBCOMMITTEE ON EDUCATION

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Education of the Committee on Labor and Human Resources be authorized to meet for a hearing on Overview of Vocational Education, during the session of the Senate on Thursday, April 27, 1995, at 9:30 a.m.

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

SUBCOMMITTEE ON HOUSING OPPORTUNITY AND COMMUNITY DEVELOPMENT

Mr. GORTON. Mr. President, I ask unanimous consent that Subcommittee on Housing Opportunity and Community Development, of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, April 27, 1995, at 9:30 a.m., to conduct a hearing on the Reinvention of HUD and Redirection of Housing Policy.

The Presiding Officer. Without objection, it so ordered.

SUBCOMMITTEE ON READINESS

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Readiness of the Committee on Armed Services be authorized to meet at 9 a.m. on Thursday, April 27, 1995, in open session, to receive testimony on the Near and Long Term Readiness of the Armed Forces as It Relates to the Future Years Defense Plan.

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

SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL AND RISK ASSESSMENT

Mr. GORTON. Mr. President. I ask unanimous consent that the Subcommittee on Superfund, Waste Control, and Risk Assessment be granted permission to conduct an oversight hearing Thursday, April 27, 9 a.m. regarding the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

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

ADDITIONAL STATEMENTS

PRESIDENTIAL SERVICE AWARD FOR SAFEHAVEN

● Mr. HATFIELD. Mr. President, today, Ms. Nellie Bradwell and Ms. Joyce Adams are in Washington, DC, on behalf of SAFEHAVEN of Portland, OR, to accept a 1995 Presidential Service Award which will be presented by President Clinton. I would like to take a moment of the Senate's time to congratulate the volunteers of SAFEHAVEN, a latchkey program serving at-risk youth ages 5 to 12 in Portland's inner-city.

The Points of Light Foundation, which selects annual award winners, is dedicated to promoting voluntarism, increasing the activity of local volunteer centers and assuring the public knows that volunteers are key components of a healthy and happy community. This year, 18 individuals and organizations have been selected to receive the prestigious President's Service Award out of over 3,000 nominations.

Ms. Bradwell, Ms. Adams and all of SAFEHAVEN's volunteers provide a safe and nurturing environment for at-risk youth after school and on Saturdays. The area they serve in the inner-northeast part of Portland has one of the city's highest juvenile crime rates, and SAFEHAVEN is attempting to make a positive change. While helping to meet the material needs of its participants, their program offers recreational activities, educational development and church services.

SAFEHAVEN is already making plans to continue their services through participants' high school years and provide a summer youth camp. I am deeply grateful to all of SAFEHAVEN's volunteers. Serving as teachers, mentors and friends they are having a positive impact on Portland's youth and community; an impact which is sure to be lasting.●

GAMBLING

● Mr. SIMON. Mr. President, the Washington Monthly recently, in an editorial, had a column by Roman Genn and a comment about gambling in the United States and its spread.

This has been a growing phenomenon in our country, and we have not examined what its impact will be on the future of our country.

The article points out some of the problems.

I introduced a bill in the last session of Congress, and I have introduced a bill also in this session to set up a commission to look at this matter.

Obviously, we are not going to eliminate legal gambling in our society. But

I believe we should know what we are doing in terms of its total impact.

I ask that the Washington Monthly item be printed in the RECORD.

The article follows:

Guess what the fastest growing business in America is? Gambling. About $330 billion was legally bet last year, reports NBC's Roger O'Neil, which is more than the defense budget and about what Social Security costs. Thirty-seven states and the District of Columbia have legalized lotteries; 20 states have casinos that are owned by Native Americans; and 10 states have licensed either casinos or riverboats. In Iowa, every man, women, and child is within a two-hour drive of a casino. Here in the District of Columbia, the lottery is pushed by hard-sell television commercials designed to encourage gambling. This is crazy. It's also evil. Why not have state-sponsored opium dens with TV commercials promoting blissful oblivion? There is a reasonable argument for the state to offer gambling and dope to those who are determined to partake of those dubious pleasures, but it is outrageous to advertise them in a way that could tempt those who might otherwise choose to say no. . . .●

TRIBUTE TO ADM. STANLEY ARTHUR

● Mr. WARNER. Mr. President, I rise today to recognize the dedication, public service and patriotism of Adm. Stanley Arthur, USN, vice chief of naval operations, who has served our Nation so well over the 37-year career. Admiral Arthur will retire from the Navy on June 1, 1995.

A native of San Diego, CA, Admiral Arthur entered the U.S. Navy through the Naval Reserve Officer Training Corps Program from Miami University and was commissioned in June of 1957. Designated a naval aviator in 1958, he reported to VS–21 and later was a plank owner of VS–29. Admiral Arthur attended the Naval Postgraduate School where he earned a degree in aeronautical engineering and was assigned as weapons project officer with VX–1.

Following a tour on U.S.S. *Bennington* (CVS–20), he reported to VA–55 aboard U.S.S. *Hancock* (CVA–19). Following that tour, he reported to VA–122 as an A–7 Corsair instructor pilot and maintenance officer.

In 1971, Admiral Arthur reported to VA–164 as executive officer and assumed command a year later while deployed on the U.S.S. *Hancock*. During this tour, he completed over 500 combat missions over Vietnam in the A–4 Skyhawk. Following assignments at the Bureau of Naval Personnel, Admiral Arthur reported aboard U.S.S. *SAN JOSE* (AFS–7) as commanding officer in July 1976. In June of 1978, he assumed command of aircraft carrier U.S.S. *CORAL SEA* (CV–43).

Other significant assignments have included Assistant Chief of Staff for Plans and Policy; Commander in Chief, U.S. Pacific Fleet staff; commander, Carrier Group Seven; director, Aviation Plans and Requirements Division; and director, General Planning and Programming Division in the Office of the Chief of Naval Operations. In February 1988, he was promoted to vice admiral and assumed duties as deputy chief of naval operations for logistics.

In December 1990, Admiral Arthur assumed duties as commander, U.S. Seventh Fleet and commander, U.S. Naval Forces Central Command for Operations Desert Shield and Desert Storm. He directed the operations and tactical movements of more than 96,000 Navy and Marine Corps personnel and 130 U.S. Navy and allied ships, including six aircraft carrier battle groups. This represented the largest U.S. naval armada amassed since World War II. In July 1992, Admiral Arthur assumed his current duties as Vice Chief of Naval Operations during a period marked by major personnel, budgetary, ship and shore infrastructure reductions.

Immediately recognizing the challenges posed by these reductions, Admiral Arthur initiated a comprehensive and in-depth review of warfare requirements, procurements planning, and programming procedures.

Through his personal efforts on the joint requirements oversight council, he was directly responsible for the continued development of a more capable naval force fully interoperable with the Army, Air Force, and allied navies.

Admiral Arthur played a key role in the formulation and implementation of the Navy's support to national policies involving operations restore hope in Somalia, southern watch in the Persian Gulf, and deny flight in the Adriatic. He played a significant role in the Chief of Naval Operations' initiatives to fully integrate women in combat ships and aviation squadrons and has been a strong leader in the Navy's efforts to eradicate sexual harassment from its ranks.

Admiral Arthur's decorations include the Defense Distinguished Service Medal, Navy Distinguished Service Medal (4 awards), the Legion of Merit (4 awards, one with combat V), the Distinguished Flying Cross (11 awards), the Navy Meritorious Service Medal, individual Air Medal (4 awards), Strike/Flight Air Medal (47 awards), the Navy Commendation Medal (2 awards, 1 with combat V), various foreign personal decorations and individual United States and foreign service and campaign awards.

Admiral Arthur is a true American patriot and a superb naval officer who, throughout his naval career, has lead with courage and integrity. His leadership and performance throughout an intense and demanding period in naval and military history were instrumental in the successful administration of the Navy and outstanding support for naval forces throughout the world. Thanks to his inspirational leadership and selfless dedication to duty, our Navy has remained second to none. While his honorable service will be genuinely missed in the Department of Defense, it gives me great pleasure to recognize Admiral Arthur before my colleagues and wish him and his lovely wife Jennie fair winds and following seas as he concludes a most honorable and distinguished career.●

CBO ESTIMATE ON H.R. 694

● Mr. MURKOWSKI. Mr. President, on April 18, 1995, the Committee on Energy and Natural Resources filed the report to accompany H.R. 694, the Minor Boundary Adjustments Act of 1995.

At the time this report was filed, the Congressional Budget Office had not submitted its budget estimate regarding this measure. The committee has since received this communication from the Congressional Budget Office, and I ask that it be printed in the RECORD.

The estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 20, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 694, the Minor Boundary Adjustments and Miscellaneous Park Amendments Act of 1995, as ordered reported by the Senate Committee on Energy and Natural Resources on March 29, 1995.

Assuming appropriation of the necessary sums, CBO estimates that implementing H.R. 694 would result in one-time federal costs totaling between $31 million and $32 million, most of which would be spent over the next five years, plus annual costs of between $0.1 million and $0.2 million during that period and about $1.5 million thereafter. Enactment of H.R. 694 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 694 would provide for boundary adjustments at several national parks. The bill also would make a number of changes to National Park Service (NPS) programs. Included are provisions to: extend the life of two advisory commissions; amend the Museum Properties Act of July 1, 1955, to facilitate the disposal of unneeded museum properties; and authorize research and education projects carried out with nonfederal partners through cooperative agreements.

Land Acquisition Costs. CBO estimates that the federal government would spend between $4 million and $5 million over the next two or three fiscal years to acquire lands added to the park system by this bill, including incidental expenses associated with property donations and exchanges.

Development Costs. Lands acquired at three parks (the Yucca House, Hagerman Fossil Beds National Monument, and Shiloh National Military Park) would be used for visitor centers or other facilities. CBO estimates that total planning and construction costs for the three projects would be about $23 million. The bill also would authorize construction of a visitor center near or within the boundaries of the New River Gorge or Gauley River park units. We estimate that development of this facility would cost about $2 million.

Other Costs. Section 204 of the bill would authorize the appropriation of a total of $2 million over an eight-year period beginning on October 1, 1993. These funds would be used to maintain facilities of the William O. Douglas Outdoor Classroom and to finance programs carried out by that entity. Assuming appropriation of the necessary sums, CBO estimates that about $0.3 million would

be spent for these activities during each of the six remaining years of the authorization period. In addition, we estimate that annual support for the two advisory commissions extended by Title II would cost the federal government a total of about $20,000 annually beginning in fiscal year 1996.

Finally, costs to operate and maintain all of the new facilities authorized by the bill would be between $0.1 million and $0.2 million annually over the next five years, and would grow to about $1.5 million annually once all development has been completed.

Other provisions of the bill would have no significant impact on federal spending.

For purposes of the above estimates, CBO assumed that H.R. 694 would be enacted by the end of fiscal year 1995 and that funding for all projects or activities would be appropriated as needed. All estimates are based on information provided by the NPS.

Enactment of this legislation would have no impact on the budgets of state of local governments.

Previous CBO Estimate. On February 23, 1995, CBO prepared a cost estimate for H.R. 694 as ordered reported by the House Committee on Resources on February 15, 1995. The estimated costs for provisions that are common to both bills are identical. The Senate version of the legislation, however, contains additional provisions that add $13 million to $14 million to one-time costs and up to $0.5 million to annual expenses.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226–2860.

Sincerely,

JUNE E. O'NEILL,
Director.●

ARMENIAN GENOCIDE

● Mr. LEVIN. Mr. President, Sunday, April 23, marked the commemoration of the 80th anniversary of the 1915–1923 genocide of the Armenian people.

In a world that seems to have gone mad with violent acts of maniacal individuals, from Oklahoma City to Tokyo, we must remember the victims of a government organized terror, the genocide perpetrated by the Turkish Ottoman Empire against the Armenian people.

Eighty years ago this week, the 8-year-long savagery against the Armenian people began.

Each year we remember and honor, the victims, and pay respects to the survivors we still are blessed to have in our midst.

We vow to remember, to always remember the attempt to eliminate the Armenian people from the face of the earth, not for what they had done as individuals, but because of who they were.

History records that the world stood by, although it knew. It knew.

Our Ambassador to the Ottoman Empire, Henry Morgenthau, telegraphed the following message to the American Secretary of State on July 16, 1915:

> Deportation of and excesses against peaceful Armenians is increasing and from harrowing reports of eyewitnesses it appears that a campaign of race extermination is in progress under the pretext of reprisal against rebellion.

Later, when Ambassador Morgenthau wrote a book about his experiences, he wrote:

> When the Turkish authorities gave the orders for these deportations, they were merely giving the death warrant to a whole race: they understood this well and in their conversations with me they made no particular attempt to conceal the fact.
>
> I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seems almost insignificant when compared to the sufferings of the Armenian race in 1915.

Oh, there were a few voices, there were a few leaders like Winston Churchill who tried to warn us. Churchill wrote the following in 1929:

> In 1915, the Turkish Government began and carried out the infamous general massacre and deportation of Armenians in Asia Minor . . . the clearance of the race from Asia Minor was about as complete as such an act, on a scale so great, could be. There is no reasonable doubt that this crime was planned and executed for political reasons.

But, for the most part, nations did not learn from history—the world looked away and genocidal horrors revisited the planet.

As Elie Weisel said, the Armenians ''felt expelled from history.''

Hitler counted on the world forgetting the Armenian genocide when he undertook the extermination of the Jewish people.

So the genocide we remember each April, the century's first genocide—is the genocide the world forgot, to its shame and for which it paid dearly.

Each year we vow that the incalculable horrors suffered by the Armenian people will still somehow not be in vain.

We make this solemn vow because we believe that it is within our power to confront evil in the world, and to prevent genocidal attacks on people because of who they are.

That is surely the highest tribute we can pay to the Armenian victims and how the horror and brutality of their deaths can be given redeeming meaning.●

THE 25TH ANNIVERSARY OF EARTH DAY

● Mr. SIMON. Mr. President, Saturday April 21, 1995 marked the 25th anniversary of Earth Day. Created in 1970 by former Wisconsin Senator Gaylord Nelson, Earth Day has played a major role in heightening the awareness of environmental problems in the United States. In the past 25 years, much progress has been made to protect the environment. Congress passed vital laws to clean up our air and water, and to prevent and reduce pollution. We also enacted the Endangered Species Act, which has helped to protect vital plant and animal species in danger of extinction. In addition, Americans have become dedicated recyclers—now collecting upward of 22 percent of our trash in over 6,600 communities. But much work remains to be done—particularly in the field of energy conservation.

The United States is in desperate need of a plan to conserve our energy supply. We are currently more dependent on foreign oil than we were in the 1973 crisis. Nearly one-half of the oil used in the United States is imported, and this has a significant adverse impact on the U.S. balance of trade. Alternative forms of fuel, such as solar energy, need to continue to be explored.

About 10 years ago, former Senator Charles ''Mac'' Mathias and I visited refugee housing in Nicosia, Cyprus, built 55 percent with American funds. Each house had a solar heating unit on it for hot water. If American taxpayers can help provide solar heating in Cyprus, why not in Carbondale, IL, and Bakersfield, CA. In 1981 my wife and I built a house and made it passive solar. In below-zero weather, we have the experience of a warm house during the daytime, with the furnace kicking on when the sun goes down. Clearly, we could do much more to encourage widespread use of solar energy.

For some years I have also been trying to promote greater research and use of electric cars. Automobile ownership is expected to increase worldwide by up to 50 percent in the next 20 years. If we do not take action, the environmental and energy problems that will result from the use of gasoline-powered cars will be monumental. The resulting air pollution and oil consumption will create problems that simply will be intractable. Widespread use of electric cars would go a long way toward resolving this problem.

I am pleased to report that we are making progress toward widespread use of electric cars. New rules have been adopted in California, New York, and Massachusetts that require 2 percent of the cars sold to be electric starting in 1998.

There is great interest in the electric car abroad. Japan wants to have 200,000 electric cars in use by the year 2000, and Europe will not be far behind. We must encourage U.S. auto companies in every way we can to produce electric cars so that the United States is on the cutting-edge of this technology. This type of conservation effort will be an investment that saves both dollars and energy resources for the future.

The question we need to face is whether we are doing what we should for future generations in environmental matters. Focusing on renewable and alternative energy sources is a good place to start.●

HONORING HARRY WEINROTH

● Mr. LIEBERMAN. Mr. President, I rise today to honor Mr. Harry Weinroth on the occasion of the 50th anniversary of his liberation from concentration camp, April 30, 1995. Mr. Weinroth was born in Sosnowiec, Poland. At the age of 13 he voluntarily entered a concentration camp so that his father

would not have to. Throughout the war he was held in several different camps including Buchenwald, Gross Rosen, and Dachau.

Mr. Weinroth lost both parents, grandparents, aunts, uncles, three brothers, and one sister in the camps. Only he and one sister survived, whom he found after the war in Germany. Mr. Weinroth along with his sister came to Stamford, CT, in June 1949. He came to this country with nothing but his trade, watchmaking, and promptly started a small business repairing watches. Over the years Bedford Jewelers has grown into a family retail jewelry store—he works there today with his wife, daughter, and son.

He still resides in Stamford, and is an active member in the community and his synagogue, Congregation Agudath Sholom. He married his wife, Luba, in 1952, whom he met at a displaced persons camp in Germany in 1948. They have two sons and a daughter, and three grandsons to carry on the family name. A 50th anniversary is worth celebrating, yet an anniversary that represents as much as this one should not and will not go unrecognized. I salute Mr. Weinroth for his courage and perseverance in the face of extreme hardship.●

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 609 TO AMENDMENT NO. 603

(Purpose: To provide for full compensation for noneconomic losses in civil actions)

Mr. KYL. Mr. President, I ask unanimous consent that the amendment of the Senator from Maine, No. 608, be set aside so that I may offer an amendment which is at the desk.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows.

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 609 to amendment No. 603:

The amendment is as follows:

At the appropriate place in the amendment insert the following new section:

SEC. . FAIR COMPENSATION FOR NONECONOMIC LOSSES AND PUNITIVE DAMAGES.

(a) FULL COMPENSATION FOR NONECONOMIC LOSSES. Notwithstanding any other provision of this Act, an attorney who represents, on a contingency fee basis, a claimant in a civil action in a Federal or State court may not charge, demand, receive, or collect for services rendered in connection with such action on any amount recovered by judgment or settlement under such action for noneconomic losses in excess of 25 percent of the first $250,000 (or portion thereof) recovered, based on after-tax recovery.

(b) ATTORNEY FEES FOR PUNITIVE DAMAGES.—With respect to any award or settlement for punitive damages, an attorney's fee, if any, received by an attorney who represents, on a contingency fee basis, a claimant in a civil action in a Federal or State court shall be established by the court based on the work performed by the attorney, and shall be ethical and reasonable. It shall be a rebuttable presumption that an ethical and reasonable attorney's fee in such an action is 25 percent of such award for punitive damages.

(c) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of losses or damages, whether through judgment or settlement.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I rise to address the question of medical malpractice concerns, and I believe I speak for many Senators in expressing the strong hope that those States that have addressed this question will not have their limitations and their efforts to address this question overruled or overturned.

In 1986, Colorado enacted, or expanded, the following general tort reforms:

Certificate of merit—Requiring a certificate of merit to be filed at beginning of case that the plaintiff's attorney has consulted with a qualified expert who based on review of the facts find that the claim has merit or ''does not lack substantial justification.''

Noneconomic damages limit—Limiting noneconomic damages, for pain and suffering, loss of consortium, and so forth, to $250,000. Colorado does allow a court to find ''clear and convincing evidence'' to justify an increase from $250,000 to a maximum of $500,000.

Collateral source—Reducing any damage award by the amount of payment by any collateral source which partially or wholly indemnifies or compensates the injured party for their injury. If the injured party purchased the coverage, the reduction is not made, for example personal disability insurance.

Punitive damage limit—Limiting punitive damages to equal actual damages—1 to 1 ratio between compensatory damages and punitive damages—but allowing the court to increase this to 3 times the compensatory damages for continued egregious behavior during pendency of the action. Evidence of the income or net worth of the defendant is not admissable.

Elimination of joint liability—Generally, Colorado eliminated joint liability for tort damages and further enhanced Colorado's comparative negligence system by which defendants are liable only for their pro-rata share of damages if the defendant's share is more than that due to the plaintiff's contributory negligence.

Good samaritan liability—Licensed physicians who render emergency assistance are not liable to a person injured unless they were grossly negligent or their conduct was willful and wanton.

Volunteer and nonprofit liability—Generally exempting volunteers and nonprofit organizations from liability, except for willful and wanton misconduct or from liability in an automobile accident to the extent of insurance coverage under the Colorado No-Fault law.

In 1988, Colorado expanded upon these reform with the Health Care Availability Act. Colorado enacted these reforms to ensure the continued availability of health care, particularly prenatal and obstetrical care, in Colorado. In 1988, facing rapidly escalating malpractice premiums, many doctors were quitting or limiting their practices and Coloradoans, particularly in our rural areas, were facing reduced choice and availability in health care.

Under the Colorado Health Care Availability Act, these additional tort reforms were enacted for medical malpractice actions:

Periodic payment of judgments—Requires payment of future damages in excess of $150,000 by periodic payment.

A cap of $1 million on damages—Generally, Colorado now limits damages in a medical malpractice action to a present value of $1 million, inclusive of the $250,000 cap on noneconomic damages. In imposing the cap, the Colorado legislature made sure that money would be available to injured persons by imposing mandatory malpractice insurance coverage on doctors and hospitals.

Voluntary pre-treatment arbitration agreements—Allows a provider and patient to enter an agreement to arbitrate any dispute over the care before the care is rendered. The Health Care Availability Act sets forth several patient protections in regard to such agreements.

Qualifications of expert witnesses—Generally, the act requires that expert witnesses in a medical malpractice action be licensed in the same medical specialty as the defendant and familiar with the applicable standards of care at the time of the injury.

Punitive damages—Punitive damages against a health care provider cannot be claimed until after the substantial completion of discovery and the plaintiff can establish prima facie proof of fraud, malice or willful and wanton conduct.

Statutes of limitation—The general statute of limitations in Colorado for medical malpractice actions is 2 years from the date of injury, or the date the injury and its cause should reasonably have been known. The Health Care Availability Act reinstituted a ''statute of repose'' which bars any action for medical malpractice being brought more than 3 years after the date of treatment.

In 1991, the Colorado Supreme Court reviewed and upheld the constitutionality of these reforms in 1991.

The reforms have had their intended effect. Malpractice insurance premiums for most Colorado physicians have been reduced substantially, by 53 percent. For the average Colorado physician, their malpractice premiums

were $18,609 in 1986. In 1994, the premiums were reduced to $8,816. For obstetricians in Colorado, the tort reforms reduced malpractice premiums by over $30,000. In 1986, their premiums were an astronomical $62,584, last year they were $31,029. This is $30,000 of overhead that the Colorado OB/GYN's now don't have to cover and it allows them to continue providing health care, and delivering babies, in Colorado.

Colorado is only one of several States that have enacted health care liability reforms. California was the first, or one of the first, with the Medical Injury Compensation Act of 1975. Indiana adopted some other different reforms including a patient-victim compensation fund. Colorado followed the California model in 1988.

Overall: 22 States have enacted limits for damages for pain and suffering; 28 States have either mandatory or discretionary collateral source rules; at least 14 States require periodic payment of large damage awards and 16 States give the option to the court; 15 or so States have adopted medical malpractice arbitration provisions; some 30 States restrict punitive damages, and around 33 have revised or abolished joint and several liability.

It is most important to Colorado, and other States which have enacted them, to get to keep their tort reforms. We can establish a Federal standard in these areas, but States which have enacted more stringent reforms should not be pre-empted by Federal law.

Senator MCCONNELL's amendment allows States to keep their reforms. Most importantly, the McConnell amendment would allow Colorado to keep its $250,000 cap on noneconomic damages and $1 million cap on health care liability damages and numerous of the procedural reforms. However, the McConnell amendment would impose new requirements in Colorado in the area of limitations on attorneys fees, and may impose additional limitations on punitive damages. Where Colorado has acted to impose greater limitations they are allowed to keep them, but where Colorado laws are not as stringent they must follow Federal law.

Mr. President, I want to thank you and I want to thank the other Members of the body.

But I want to make this message clear. What we are talking about is not simply an arbitrary or theoretical exercise in trying to address the medical malpractice question. What we are talking about is an effort that can lead to significant drops in medical malpractice insurance. We are talking about something that will dramatically reduce the overhead of health care providers. We are talking about something that can have a very significant change in what consumers pay.

Thank you, Mr. President.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Arizona.

Mr. KYL. Mr. President, I would now like to discuss the amendment which I have just a moment ago offered, an amendment which will complement what the Senator from Colorado has just spoken of by helping to get health care costs under control, but, more importantly, to put a better balance into the awards that are received in cases where today the attorney is taking too much of that award and the victim is receiving too little of it.

My amendment is an amendment which provides some very modest limitations on attorneys' fees in the kinds of cases in which very large awards have sometimes been granted and where, by virtue of the fact that the attorneys are awarded a contingent fee or have arranged for a contingent fee contract, they receive a percentage of that award.

It is common in cases of this kind for the percentage to be at least one-third and frequently 50 percent, sometimes even more, of the recovery. That means that if a plaintiff in a case receives $100,000 in an award, the attorney is likely to receive somewhere between $30,000, $40,000, $50,000, leaving the plaintiff with frequently about half of what is recovered.

There are some statistics in this regard which I would like to refer to which indicate that actually the percentage that the attorneys' fees are taking is even greater. When you add the other administrative fees of the court and so on, you end up with a situation in which the victims frequently get less than half the award the jury thinks they are receiving.

This bill will, I hope, reform a situation that the Wall Street Journal wrote of in an article recently—March 12, specifically—noting that the result is that fees paid to plaintiffs' lawyers can range from $1,000 to $25,000 per hour—Mr. President, per hour. Twenty-five thousand dollars is more than a lot of Americans make in an entire year and yet, as the article notes, some lawyers have made that much per hour spent on a case. That is what we are trying to avoid with this amendment.

A recent Department of Commerce report stated that 40 cents of each dollar expended in litigation is paid in attorneys' fees. A 1994 study by the Hudson Institute found that 50 cents out of each litigation dollar went to attorneys' fees.

So you see, Mr. President, the notion that these attorneys' fees, contingency contracts, or agreements result in almost half, sometimes more than half, of the award going to the attorney are borne out by the studies that have been performed professionally on this matter. And that is what we are trying to change here.

I think, really, Mr. President, for our tort system to retain, or to regain, really, credibility as a fair and equitable dispute-resolution system, it has to be more efficient, less litigious, and we have to ensure that a larger portion of the judgment awards actually goes to the claimants rather than to the attorneys.

Now, some will say when I describe this amendment in just a moment that this is not really much of a limit on attorneys' fees. Those who like to bash lawyers will say you really have not limited them.

My effort here is not to punish lawyers, but it is to try to ensure that more of the money that the jury awards goes into the pocket of the claimant. As I said, today the typical fee is at least a third, frequently at least 50 percent.

I would like now to describe the three different kinds of awards that might be granted in a case and indicate what the percentage in each case would be under the underlying bill and under my amendment.

Under the McConnell amendment, which is essentially pending before us here, the award is limited in a health care liability case, typical medical malpractice case, to one-third of the first $150,000, and 25 percent of any amount in excess of $150,000. So on the first $150,000 you get a third and on anything greater than that you get 25 percent.

Now this guarantees, Mr. President, that there is an adequate incentive for an attorney to take a small case, because for the economic damages—these are damages that repay the doctor, the hospital, and so on and also provides for compensation for any economic losses, time loss from work, inability to perform work in the future and so on—it guarantees that the attorney is going to get a third of the first $150,000 and 25 percent of everything thereafter. So there is adequate compensation for a lawyer to take even a relatively small case.

But cases usually involve another element of damages called noneconomic damages. And these are the so-called pain and suffering damages. So that after a person has been compensated for the out-of-pocket expenses to the hospitals and to the physicians and so on and for any lost wages and future lost economic earning power, juries also frequently—in serious cases virtually always—award the claimant a sum of money representing the pain and suffering that that claimant suffered; the hurt, the anguish, the pain.

That award is frequently a multiple of the economic damages. So in many case, most cases, it exceeds the economic damages.

What my amendment says is that the attorneys' fees should be limited to 25 percent of that award up to $250,000. So, in the case of the McConnell amendment, added onto the Kyl amendment on attorneys' fees, you would have essentially either 25 percent or 33 percent as the limitation.

Now, as I say, compared to 50 percent, some people will say, ''Well, you haven't really gone down all that much.'' But since some of the very high awards are in excess of $250,000, we

have denied the attorneys their windfall, their lottery award. They are going to get plenty up to the $250,000, but what they will not get is that big bonanza, the jackpot, where they convince the jury that there is such an egregious situation here that the claimant gets, let us say $1 million, and the lawyer then is going to get at least a half a million. No. The claimant in this case would get the bulk of that $1 million, if that is the amount that is awarded.

So what we are saying here is that the lawyer is going to be limited but guaranteed, in effect, a percentage of both the economic damages and noneconomic damages, if they are otherwise awardable. They just cannot exceed either 33 percent or 25 percent.

In the case of the noneconomic damages, the pain and suffering damages, they cannot exceed 25 percent of the first $250,000, or in other words, $62,500.

Now in some cases, Mr. President, there is a third kind of award and it is punitive damages. There have been several statements made about punitive damages and ways to limit punitive damages. These are the damages not intended to compensate the victim but rather to punish the defendant for wrong conduct, conduct that is very wrong, that is willful or malicious, is in great disregard of the rights of the public and intended to cause a defendant never to do it again or, in the case of a defective product, for example, to fix that product and never allow a defective product again to hit the market.

In those cases, there are limits in the underlying bill on the amount of punitive damages that can be collected. Under the McConnell amendment, the total award for punitive damages in the medical malpractice kind of case is either $250,000 or three times the economic damages, whichever is greater. The Snowe amendment, which has been presented just before my comments, would limit the total award for punitive damages in these cases to two times compensatory damages, which is the sum of the economic and noneconomic damages. In either case, there is some limit on the amount of punitive damages.

The question is, should attorneys receive any percentage of that as well? And what my amendment says is that if the attorney believes that he or she is entitled to a percentage of the punitive damages awards in addition to the other two kinds of awards, that attorney may petition the court and the court may grant reasonable and ethical attorneys' fees based upon the amount of time that the attorney has put into the case.

There is a presumption that 25 percent is reasonable. So, here again, the attorney can petition the court, can get at least 25 percent. A court may even deem that a larger amount would be warranted. But, in any event, it has to be reasonable and ethical and based upon the amount of work that the attorney put in.

So, as I say, Mr. President, some people will say, ''Well, this is not much of a limitation. You haven't whacked the attorneys. You haven't cut them out of all of their awards,'' and so on. And we have not.

The reason we are offering the amendment this way is to guarantee that people who have a good case can get a lawyer to take their case, and with these limitations they can clearly get the lawyers to take their case.

But what it prevents is the situation where the lawyer gets the bulk of the recovery and, in the case of the very large award, hits the jackpot, gets the big bonanza, in effect.

The objectives of the overall legislation, Mr. President, are, first of all, to ensure that people can be compensated in our tort system. This bill helps to guarantee that result.

We need incentives for lawyers to take these kinds of cases which frequently the plaintiff cannot pay for by the hourly rate or money up front to the lawyer, so there has to be a contingency fee. We provide for that.

We need to ensure that in the case of the economic damages, the lawyer is limited in how much of those economic damages can be recovered as attorney's fees. That is limited in the underlying bill.

We are saying that with respect to the pain and suffering damages, most of that ought to go to the victim. Seventy-five percent of it ought to go to the victim, the claimant, the plaintiff. But, again, we allow up to $250,000 of noneconomic damages, the recovery of 25 percent of that amount by the attorney and, as I said, in punitive damages, the opportunity to collect fees there, as well.

So the real question is whether lawyers should be getting 50 percent, or somewhere between 25 and 33 percent. And I think, Mr. President, that this body will agree that placing some cap, some limit, is desirable and that it will help us to avoid the situation that causes a great deal of public anger, frankly, with our litigation process.

Ironically, I think we might even help the legal profession, which is being greatly criticized by the public in public opinion surveys these days primarily because of their fees. There is a Hudson Institute study which notes that there has been a doubling of negative attitudes toward lawyers since 1986 and that exorbitant attorney's fees are a major factor in this increase in the public's ill will for lawyers.

Ironically, we may even be helping the legal profession, and that is not all bad, either. We will be debating this amendment, and others, on Monday next, and I hope very much that all of the Members of the Senate will reflect on how this amendment, narrow that it is, will improve the bill, will improve the McConnell amendment, and will improve the pending amendment before the body and, as I said, allow the victims to recover more of what the juries award to them.

Mr. President, I will debate and present further arguments with respect to this matter on Monday. At this time, I would like to make a closing statement on behalf of the leader.

ORDERS FOR MONDAY, MAY 1, 1995

Mr. KYL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 11 a.m. on Monday, May 1, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be waived, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 12 noon, with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator GREGG, 30 minutes; Senator GRAMS, 15 minutes.

Further, that at 12 noon, the Senate immediately resume consideration of H.R. 956, the product liability bill.

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

ORDER OF PROCEDURE

Mr. KYL. Mr. President, for the information of all of our colleagues, the leader has asked me to announce that the Senate will return to session on Monday. However, there will be no rollcall votes during Monday's session. Under the order, any Member who wishes to offer a medical malpractice amendment must offer and debate that amendment on Monday. Any votes ordered on any of those amendments will be stacked to occur at 11 a.m. on Tuesday.

ADJOURNMENT UNTIL MONDAY, MAY 1, 1995, AT 11 A.M.

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:14 p.m., adjourned until Monday, May 1, 1995, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate April 27, 1995:

THE JUDICIARY

GEORGE H. KING, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

DONALD C. NUGENT, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, VICE THOMAS D. LAMBROS, RETIRED.