

health care, Medicare select automatically becomes a permanent option after 3 years. If, on the other hand, the Secretary finds serious problems with Medicare select, the program expires June 30, 1998.

This is a very sensible compromise. It protects the Government against unintended consequences while also allowing the program, if successful, to become permanent without having Congress take additional action.

#### CORRECTION IN THE ENROLLMENT OF H.R. 483

Mr. CHAFEE. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Senate Concurrent Resolution 19, submitted earlier today by Senator PACKWOOD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 19) to correct the enrollment of the bill H.R. 483.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. CHAFEE. Mr. President, I ask unanimous consent the concurrent resolution be considered and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (S. Con. Res. 19) was considered and agreed to as follows:

#### S. CON. RES. 19

*Resolved by the Senate (the House of Representatives concurring).* That, in the enrollment of the bill (H.R. 483) to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes, the Clerk of the House of Representatives shall make the following correction: Amend the title so as to read as follows: "An Act to amend the Omnibus Budget Reconciliation Act of 1990 to permit medicare select policies to be offered in all States."

Mr. CHAFEE. Mr. President, I thank the manager of the bill very much for permitting us to proceed like this.

Mr. SARBANES. If the Senator will yield, I think his thanks should really be directed to the distinguished Senator from California, who, under the unanimous consent request, was in order to offer her amendment and deferred from doing so in order to allow the Senator to proceed.

Mr. CHAFEE. The Senator from Maryland is absolutely correct. I stand admonished.

I thank the Senator from California for her kindness in letting me proceed as we did. Otherwise, I would have been here, hanging upon every word of her

amendment, but that might have taken me past important appointments at home.

So I thank the lovely lady from California. I count it fortunate that she is a member of the Environment and Public Works Committee, where she does distinguished service, and has ever since she has been in the Senate.

Mr. President, I thank the Senator from California, the distinguished Senator from Maryland, and the floor manager of the bill, the honorable Senator from New York.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mrs. BOXER. Mr. President, let me say to my chairman of the Public Works and Environment Committee, if I could get his attention, I greatly appreciate the kind words he said about me. If he votes for my amendment, I will appreciate it even more.

I hope he will do that because, Mr. President, I think I do have a good amendment.

#### PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

#### AMENDMENT NO. 1475

(Purpose: To establish procedures governing the appointment of lead plaintiffs in private securities class actions)

Mrs. BOXER. Mr. President, I send an amendment to the desk on behalf of myself and Senator BINGAMAN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself and Mr. BINGAMAN, proposes an amendment numbered 1475.

Mrs. BOXER. 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:

On page 98, strike line 3, and all that follows through page 100, line 22, and insert the following:

"(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) or (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(ii) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

"(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

"(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plain-

tiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

"(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class."

On page 102, strike line 3, and all that follows through page 104, line 22, and insert the following:

"(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) of (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(i) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

"(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

"(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

"(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class."

Mrs. BOXER. Mr. President, let me explain my amendment. My amendment deletes language in the bill which instructs the judge to make the largest investor in a securities class action suit the lead plaintiff in that suit. To me, on its face, as a nonlawyer, this is an amazing proposition. The richest investor gets to be the lead plaintiff.

My amendment is designed to give the little investor, people with IRA's, Keoghs, a 401-K plan, the chance to be the lead plaintiff.

My amendment is simple, reasonable, fair and, I believe, democratic. This bill assumes the wealthiest investor is somehow better suited to represent smaller investors in the suit.

Mr. President, class action securities lawsuits are supposed to protect the average and the small investor—not only the largest investor. Of course we want to protect them as well. But clearly we are concerned about the small investor. In fact, class action lawsuits are the only practical chance that the small investor has to recover if he or she has been defrauded.

Why do I say that? The small investor, let us say, has been defrauded out of \$500 or \$1,000 or \$5,000. That small investor simply cannot afford to bring an individual action against a fraudulent party. It would cost way more than even the \$5,000 to do so, maybe even more than the investor's total net worth, just to recover the small investment.

So in practical terms, class actions are the small and average investor's only chance to recover. This bill, S. 240, without my amendment, would

deny them control over their own lawsuits. It would put the largest investor in control.

I said my amendment is democratic. I say that because it allows the members of the class to decide who will pick their representative called a "lead plaintiff." The lead plaintiff will then represent the class, control the litigation, and hire lawyers to serve as class legal counsel.

The candidates for lead plaintiff are all named plaintiffs who file motions with the judge saying they want to serve as the lead plaintiff.

My amendment, and the bill, require that notices be placed in a widely circulated national business-oriented publication or wire service, which then gives notice to all the class members that there is a class action. That way, every member of the class has an opportunity to be named the lead plaintiff.

Under my amendment, the court will appoint as lead plaintiff anyone unanimously selected by the named plaintiffs who have filed lawsuits. And that seems to me the way it ought to be. Everybody has an opportunity to decide who will be the lead plaintiff. I think it is fundamentally undemocratic to do it otherwise—to do what this bill does, to prevent the members of the class from picking their lead plaintiff; to require that the largest investor be appointed.

Under my amendment, only if the plaintiffs cannot agree unanimously among themselves on the lead plaintiff would the court decide who the lead plaintiff should be. So, first we have all the plaintiffs decide who they want. If they reach unanimous agreement, it is so done. If they do not, then the judge or the court would decide who the lead plaintiff would be.

Again, the bill without the Boxer amendment requires that the judge appoint the largest investor. Again, my amendment merely says if the plaintiffs at first do not agree, the judge, after considering all relevant factors, shall select the lead plaintiff.

The court, under the Boxer amendment, could very well pick the largest investor. But the court does not have to at that point. So, if everybody agrees on the lead plaintiff, it is done. If they cannot unanimously agree, then the court will select, and they can certainly look at who the largest investor is, but that should not be the only criterion.

My bill requires the court to consider all relevant factors in selecting a lead plaintiff or plaintiffs. These factors include—and they are in my amendment—but are not limited to the following:

First, the financial stake that the lead plaintiff would have in the lawsuit. So we agree with the chairman. Let us take a look at that.

Second, how much work and money he or she has expended on the suit thus far. We think it is important for the judge to see who has made the biggest investment so far.

Third, the quality of that work.

Fourth, the quality of their individual claim.

Fifth, whether they have any potential conflicts.

Sixth, whether the defendants would have any unique defenses to this lead plaintiff—which I will describe later.

So, again I say to my friends, as Senator BRYAN has said, this is not an exciting issue. No one is glued to their TV sets saying, "Gee, we have been looking forward to this all day, Senator BOXER." But clearly a lot is at stake. If you are a small investor and automatically the largest investor is picked, even if that large investor has a conflict of interest—and I will go into that—you are going to really take it in the neck. You are going to be out of luck, and I am going to explain this.

It could be that the defendants are accused of having targeted the elderly. This is not uncommon. I made that point today. I am glad my colleagues agree that senior citizens are the targets here. Would the largest investor be the best plaintiff in a fraud against targeted senior citizens, small investors? Not necessarily. And this is where maybe some people will wake up and will take notice.

Let us look at the Keating case, a case my colleagues on the other side of this issue keep telling us not to bring up. I have news for them, we are going to bring it up because it is on point and it is on target.

Listen to this. Keating was sued by small investors who bought his securities. One of the largest investors eventually became a defendant in the small investor lawsuit. If this bill had become law it would have been clear that the judge should appoint that large investor as the lead plaintiff. Talk about foxes in charge of the chicken coop. Many of the biggest investors in Keating's junk bonds were friends of Keating and associates of Michael Milken, including Executive Life Insurance Co. of California, and a Minneapolis brokerage company called Offerman & Co. These relationships were not public when the lawsuit was filed. Under this bill Offerman & Co. would have been put in charge of the Keating class action. That would have meant that Keating's friends and junk bond cronies would have been in the position to stifle the lawsuit.

I say thank God this bill was not law and the small investors were in charge. They eventually uncovered the hidden relationship. But they never could have uncovered those relationships at the point at which the judge was deciding who the lead plaintiff should be, and he would have had to pick the largest investor.

Here is the thing. The largest investor became a codefendant and eventually paid \$55 million to the small investor. If this bill had been the law of the land, the largest investors would have been in control of the suit. They would have been the lead plaintiff in the suit. And I say the Keating case is just an isolated example.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. I am happy to yield to my friend.

Mr. SARBANES. Mr. President, this is an extraordinarily important point which the Senator from California is making. In fact, the SEC in commenting on this provision of the bill that is before us said, and I quote them:

One provision of section 102 requires the court generally to appoint as lead plaintiff the class member that has the largest financial interest in the case.

Exactly the provision the Senator is addressing.

The SEC then says:

While this approach has merit, it may create additional litigation concerning the qualification of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management, or interest that may be different from other class members.

As I understand it, you permit having the largest financial interest to be a factor to be considered by the judge if all the plaintiffs cannot get together on who the lead plaintiff should be. Then the judge has to pick a lead plaintiff, and the Senator concedes the one factor to be looked at would be financial interest. But the bill as written provides the presumption to the large financial interest plaintiff which carries with it the risk, as the SEC points out, where the lead plaintiff may have ties to management or interest that may be different from other class members.

As the Senator points out, they later found that out in the Keating case. Well, you say they will find it out in the beginning. They cannot find it out in the beginning. In fact, the bill as written denies the discovery in the early stages unless you already have a reasonable basis for doubting the lead plaintiff. This whole thing is structured in such a way that a lead plaintiff who has ties to the defendant, a party that has ties to the defendant, can end up being the lead plaintiff.

Mrs. BOXER. My friend is right on target, and as usual presents the point magnificently. This is a total outrage. It is a total outrage because at the time when the judge will decide who the lead plaintiff could be, they say there is a rebuttable presumption, but it is really irrebuttable because of the high standard that has to be met. It will be the largest investor. And after I yield to my friend from Nevada, I am going to show you another case on point so that we show the Keating case and how it would have worked to have the people who eventually wound up paying the small investors under this bill be the lead plaintiff. There would not even have been a case, if that had been the law. I shudder to think about the miscarriage of justice.

Here we are today. You know one of the reasons I think so. We are making our points here. Obviously, we can tell by the votes that so far we were not carrying the day except my one amendment that requires a report. We are not

carrying the day. But, by God, let us make the record and let us be clear on it so that if there is an explosion, and investors get defrauded, and we have another S&L-like scandal on our hands, and people are scared to death to invest and all they do is buy Government bonds, I think some of us can point to this debate and say we tried; we made the record.

Mr. BRYAN. Will the Senator yield?

Mrs. BOXER. I am happy to.

Mr. BRYAN. I want to compliment the Senator. We have heard many times during the course of this debate the word "balance." I think what the Senator has done in revisiting this particular section of the bill represents the essence of balance. As the Senator has pointed out, the Senator's amendment does not preclude the consideration of wealth, if I am reading the Senator's amendment correctly.

Mrs. BOXER. That is correct.

Mr. BRYAN. But it simply indicates that where there is not a unanimous agreement it is simply a factor. Am I correct?

Mrs. BOXER. Exactly.

Mr. BRYAN. Let me say it is my understanding—the Senator can correct me if she has a different view—that the very essence of a class action is to allow individuals who are very small with relatively modest investments to band together, that there is a unity of interest, a commonality of purpose; can band together, and that same commonality of interest may or may not exist with respect to a large security underwriting house which may have other dealings with the defendants who may indeed have a little self-dealing. "We will wash your back on this one if you will wash our back on the next one."

Is that the essence of the Senator's concern?

Mrs. BOXER. The Senator from Nevada, the former attorney general of that State, is so right on point here.

If a relatively small investor who, let us say, owns a home and a car, and is retired and has a \$50,000 investment, I say to my friend that means so much to that individual. The large investor could be a big brokerage house. We have a brokerage house that is worth \$50 billion. They may be the largest investor in this particular company. They may have \$1 million. That \$1 million is a lot more than \$50,000, but to that large company it is nothing. Whereas, the \$50,000 to a small investor is virtually everything.

Today I put in the RECORD a story of one of my constituents who was one of the victims of Keating. She lost \$20,000. It was the difference between her being dependent or independent. She talked about the pain of knowing she just waited for that Social Security check because they bilked her out of her money; the savings she needed.

So the Senator is so right. This bill, I do not know how to put it, it is so elitist. I do not like that word, but I cannot think of another word. It is not

fair, it is elitist. It is looking at a small investor as if they were worth nothing.

I want to give my friends another example. This is a recent example. The Wall Street Journal reported only last month that a large Wall Street investment bank—and I am going to name the bank because it is in the paper; they have a great reputation—Wertheim Schroeder—filed a class action against Avon Products for securities fraud. Wertheim Schroeder filed a class action against Avon for securities fraud. Wertheim was supposed to represent the interests of the small investor. But the Journal reported that Wertheim tried to get Avon to settle the case by giving Wertheim \$50 million to invest. That is no way to benefit the small investor, to settle a lawsuit.

It does not even think about the small investors. This bill would prevent those small investors from discovering the secret deal, because they would have to know about it before they could use subpoenas to find out about it.

So here is the largest investor who has its own agenda, clearly, and that agenda did not benefit the small investors. But under this bill, the small investors could not have found that out and automatically, therefore, the largest investor would have been the lead plaintiff.

We talked about the rebuttable presumption so I will not go into that. It really is simply not there, because my friend, the Senator from Maryland, explained the bill precludes the small investor from being able to subpoena or discover a large investor's hidden conflict.

In other words, if you cannot read about it in the newspapers, forget it. Only if the conflict is obvious would the small investor be able to prove it, and it is just very unfair. In other words, the rules are stacked against the small guy and the rules are in favor of the large guy. Now I have shown you two examples, the Keating case and this other Avon case, and I am sure there are many more.

In other words, if the large investor can hide its conflict of interest, it is home free, it is going to be the lead plaintiff. Small investors will not be able to uncover the conflict. My God, I know we want to stop frivolous lawsuits, we all do, but I do not know anyone who would say that the suit against Charles Keating was frivolous, but we are standing on the floor of the Senate, a few of us, trying to show you that it would have totally changed the outcome of that case, and we have to be very, very careful.

Mr. President, I see nothing in the record which supports the thesis that the largest investor is more honest or more trustworthy. In fact, history suggests there are reasons to believe that the opposite is true, and I showed you a few of those.

In response to my friend from Nevada, I pointed out that a \$50,000 in-

vestment from an individual's IRA sometimes is worth much more than a huge investment by a huge company.

I want to make another point—

Mr. BRYAN. Will the Senator yield for one more question? I know the hour is late.

Mrs. BOXER. Yes, I will be happy to yield.

Mr. BRYAN. I compliment the Senator for her fine work. As I am reading the print before us, I am almost offended with the language "the most adequate plaintiff." Somehow if you have \$10,000 in this investment and that is all you have, somehow you are less adequate to be the lead plaintiff in the action.

My question really deals with the origin of this. I sat in on as many of the hearings as I could. The chairman was extremely fair in posting notice and giving us opportunity to present our arguments and to make the point, but I do not recall this being in the original bill. I do not recall any testimony offered in behalf of this measure. I do not recall any discussion or debate about this at all. Perhaps the distinguished Senator from California can enlighten me further on that.

Mrs. BOXER. My friend is right on target again. The language about lead plaintiff was added only 4 days before the committee markup, weeks after the last hearing. I see nothing in the committee records that supports giving the large investor virtual control over class actions. This was added 4 days before markup, and it is very meaningful. I have one more point and then I am going to yield to my friend from Maryland, but I want him to listen carefully to this as well. We believe on our reading, and we have put a lot of legal minds to work on this, that the bill makes it possible for the largest plaintiff to sneak into a class action and become the lead plaintiff without going through any of the requirements that all the other investors have to go through.

A large investor can hijack a small investor's case. Listen to this. It is our understanding that large investors do not even have to file a lawsuit in order to take control of the suit. A large investor only has to sit back and wait to see if a small investor files a suit, see if the suit has merit and then pounce on it. The small investor will have invested his or her scarce time and money investigating the case and filing it.

At that point, this bill permits the largest investor to take over without even having to file the lawsuit. He does not even have to be a party to the lawsuit. It means the largest investor does not have to run the risk of rule 11 sanctions of filing a frivolous complaint, sanctions that small investors who bring the original complaint are subject to by this bill, which a lot of us support.

But the largest investor is scot-free. This forces the small investor to take the risk but rewards the big investor.

It is to me extraordinary. The bill permits a large investor to control the class action and the rights of small investors without having to describe in a sworn certification filed with the court how the largest investor came to buy the securities that made it the largest investor. Small investors who file a lawsuit have to include a sworn certification describing how they purchased the security. That is good. But why should the largest investor not have to do that?

Let me bring that home. This means that the largest investor would not have to disclose even a sweetheart deal with the defendant that might have resulted in his buying the securities, a sweetheart deal that should disqualify the largest investor from being the lead plaintiff.

This type of sweetheart deal was very common in the eighties when Michael Milken gave preferential shares of junk bonds to his insider friends. Like Ivan Boesky—I am bringing up names from the past, not because I want to try people again. They went through a lot of pain. I am trying to make a point, if we do not learn from the eighties, what are we doing here? So this bill would put Ivan Boesky in charge of a class-action lawsuit. How well do you think Ivan Boesky would have represented small investors? It would have put Boesky in a position to take over lawsuits against Michael Milken.

Mr. SARBANES. Will the Senator yield on that point?

Mrs. BOXER. Yes.

Mr. SARBANES. I do not think the Senator from California ought to express reluctance or apologize for bringing these names out of the past in order to remind people what has occurred in this area and the tremendous damage and harm that was done to thousands of innocent investors. And we are running the risk here—I thought the Senator was absolutely right earlier when she said, we are, in effect, writing some history here, making a record so that down the road we can look back and say, it was at that point that a decision was made that led to these terrible consequences.

One of the articles in U.S. News & World Report was headed "Will Congress Condone Fraud?" and then the article ends by saying:

The pendulum had swung too far toward the lawyers, and now it is swinging too far the other way. Unfortunately, some major investor frauds may have to take place before it again moves back toward the center.

And we are trying to prevent that here and now. We do not want those major investor frauds to take place, and it is our contention that many of the provisions that we are trying to change will make it possible for that to happen. That is why I think that the points the Senator from California is making are so extremely important. Things of these measures have consequences, and the consequences may be very harmful and detrimental. Her reference back to earlier abusers is

very much on point in underscoring that fact.

Mrs. BOXER. I want to thank my friend, the ranking member of the committee, and my friend from Nevada. But it is painful to bring back these issues. To me, it is extraordinary that we are giving insiders, real insiders who may have had a sweetheart deal with a company, the chance to be the lead plaintiff.

That is really hard to swallow. And I think the Boxer amendment is very fair. It basically says let us have fairness and justice to this section of the bill. We do not discriminate against the largest investor or the smallest investor. We say let all the plaintiffs get together and unanimously pick their lead plaintiff. If they cannot agree, let us have the judge take a look at it. Let us have him or her take into account who the largest investor is. Let us have him or her take into account the legal work that has been done and then we will have him or her choose who the lead plaintiff will be.

So, Mr. President, I truly hope that this debate has been enlightening to any of those who have listened to it. Let us not turn the clock back to the 1980's. Let us not get into a situation where small investors are so scared that they start putting their dollar bills under the mattress. We want the moneys out there. We want them to invest their moneys for economic growth. But let us not skew the system so much against them they feel they do not have enough protection.

I reserve whatever time I have remaining. I will yield the floor at this time.

The PRESIDING OFFICER. The Senator reserves the remainder of her time. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I find it interesting that we talk about preserving the system to help the little people. Let me tell you something. What is actually taking place is the small investors are being used, and they are not representatives of any class. The only class they are representatives of is the greed and avarice of the attorneys who are milking the system and are spending the millions of dollars they make from the settlements right now. The lawyers are financing the public interest groups, which are lobbying to keep this system. It is the lawyers protection act to enrich themselves. That is what this amendment is.

Let us look at the lead plaintiffs, the big law firms in New York and California that are manufacturing most of these cases. Who do they have? Steven Cooperman was named in 14 cases between 1990 and 1993. Is he the little guy who got bilked out of \$10,000? How many shares does he own in how many companies? He is a hired gun. And who is he going to select to be his lawyer? I will tell you what he has done 14 times; 14 times he has decided between 1990 and 1993 to take the same firm.

Sheldon Shore, 10 times, same firm. Mr. Shore, do you think he really represents the working people? I bet he did not even know there was a suit until he got a call because his name is in a computer and that stock dropped 6 points, and then he gets right on in there and he brings a suit.

Now, that is not what the legal system is supposed to be about. Do you want to go through them again? Rodney Shields, seven; David Steinberg, seven; William Steiner, six; Ronald Kassover, five. We are talking about just a small handful of people who have been involved in suits multiple times in 3 years. It is a racket. It is not the little homeowner. It is not the pensioner investing for his retirement.

So what do we try to do? We try to say let us stop the race to the courthouse by a bunch of quick scam artists. Let us see to it that the people who have a real stake, if there are some shenanigans going on, let us see to it that the small investor with a real stake is given control over the suit. This legislation protects the small investor by creating a rebuttable presumption that the person who has the largest financial stake should lead the case.

And who do you think we are talking about? You think we are talking about an investment banking firm? A securities firm? No.

My colleagues say they have knowledge of securities areas, in fact some of them have worked in securities. If you worked in the securities area, do you know that 51 percent of all of the funds that are invested are by institutional investors? And guess what? Half of that, \$5.5 billion is in pension funds—pension funds. Those are the little guys. They have every nickel and dime they have earned for their retirement in there, and I think those pension fund managers, the institutional investors should be consulted when lawsuits are brought. And if they have a position in a company and they have invested hundreds of millions and they represent tens of thousands, hundreds of thousands of small investors, I want them to lead the case and I do not want Mr. Cooperman and the other guys over there picking the class.

You better believe I wish to change it. I am sick and tired of having a system that rips off the American people so a handful of lawyers can get rich. They do not give two hoots and a holler about the small investor. Let us stop them from taking over the lawsuits. Do not come in here telling us that with this legislation we are trying to protect the fat cats. I want a system where if there is an institutional investor, and they have got some losses, that they have an opportunity to come to the Court, and by a rebuttable presumption they have an opportunity to be picked as lead counsel.

Now, let me ask you, the only time that you have all the plaintiffs line up and agree on the lawyer is when these seven or eight plaintiffs race in to the

courtroom at the same time—and they all say to the judge: Guess what, we all want the same law firm. Is that fairness? S. 240 creates a rebuttable presumption that the Court should look at the size of the financial interest, by the way, all the other standards under the Federal code of procedures. They still have to meet any challenges, but the lawyer who represents the pension fund should at least be given that presumption that they are the best counsel to keep the interests of the small investor.

And by the way, if everyone agrees—and it would seem to me that all the small investors would want to be represented by somebody who would have a stake in the case. I want true plaintiffs, and if it is that person who has lost their life savings of \$25,000, they are certainly going to want that pension manager who has a real stake on behalf of tens of thousands of similar people to be there to be supervising, to be watching.

I look at this legislation, and I see that the amendment that is crafted talks more about the lawyers—the plaintiffs counsel. It says the judge should consider the work done to develop and prosecute the case. We are talking about 90 days in which this has been filed when the judge is going to have to make a decision. I would like to know what work is done by a plaintiff within 90 days.

The judge should also consider the quality of the claim, prior experience representing the classes and possible conflicting interest. This is the lawyers protection amendment. This is not a class action amendment. This is not an amendment designed to see to it that the little guy is really represented. This is to continue the same kind of charade as exists now. And as well-intentioned as my colleague might be—and I believe she is very well intentioned—I believe that what this amendment will do is just allow another way for the entrepreneurial lawyer to get around the door and race to the courthouse to stake his claim and keep control of the case—not on behalf of the truly aggrieved but on behalf of the fat law firms who want to get fatter. There are only a handful of these firms, but that handful has been a plague, that handful has kept the securities industry from doing what it does best, which is to provide capital for jobs, provide creativity, let firms experiment, let them go forward, let them do what they can do best without being unduly harassed.

For those who break the law, for those who commit fraud, we have kept a strong SEC presence at every turn. We have provided that those who truly commit fraud will have no way out, whether it be through the so-called aiding and abetting, although, if you knowingly commit, you are not an aider and abettor, you are a perpetrator under this act and will be held liable.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I listened very carefully to my chairman, and I have to tell you I did not hear him give me any reasons to be against this amendment. He said this amendment protects lawyers. Well, I have news. If I wanted to do that, I would have just struck this whole section which other colleagues had wanted to do, but I did not do that. I said yes, I think my chairman has a point. We ought to look at the largest investor, and we have put it in here very clearly so the judge can consider the larger investor.

So I really take exception to the fact that this is keeping business as usual. We are not keeping business as usual. And my friend does not address the point of the examples that we gave on the Keating case, the examples we gave on the Avon case, where the largest investor happens to be involved in a sweetheart deal which never could have been discovered by the time the attorney was appointed.

Now, I agree with my friend, if you are talking about a pension plan, that is fine; that pension plan would probably be appointed under the Boxer amendment, because if the pension plan comes on board and is one of the plaintiffs and files a suit and holds out and does not agree with the appointment of the lead plaintiff, then the pension plan would go before the judge and, under the Boxer language, no doubt would be selected.

So I have not heard my friend argue against the basic premise of the Boxer amendment, which is this: Just because you are the richest does not make you the best. Just because you are the richest does not mean that it is fair to appoint you as the lead plaintiff. I do not think anything my friend said really attacks the basic premise of the Boxer legislation.

Now, I have to say that my friend talks about this bill as if it is supported by the SEC. I have the latest comments of the SEC. Yes, they support certain parts of the bill, as do I, and as does my ranking member and the Senator from Nevada. But it has a number of problems. And they raise the issue of lead plaintiff, and they say this could have merit but there are some unintended consequences here. And I would say that the Senator from California, the Senator from Maryland, and the Senator from Nevada are raising these unintended consequences. We will continue to do that tomorrow when we have our time, when Senator BINGAMAN has asked me for some time.

Mr. President, again, there are lawyers on both sides of all of these issues. There are lawyers on both sides. So to me, what is important is, who is against this bill? Virtually every consumer organization in America: community colleges, the Association of Retired Persons, the American Bar Association, the American Council on Edu-

cation, the Association of the Bar of the City of New York, the Association of Jesuit Colleges and Universities, Citizen Action. And I mentioned the consumer's groups: the Consumer Union, Consumers for Civil Justice, Consumer Federation of America, Council of Independent Colleges, the Fraternal Order of Police, International Association of Machinists and Aerospace Workers, Investor's Rights Association of America, Municipal Treasurer's Association of the United States—and Canada, I might add—the National Association of County Treasurers and Officers, the National Association of State Universities and Land Grant Colleges, and National Council of Senior Citizens. I read the letter from the California branch of that group today. They said it is the most antisenior citizen piece of legislation to come before the Congress in years. There is the North American Securities Administrators. And it goes on and on.

So I hope that some of these amendments will be voted up.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. I am glad to yield.

Mr. SARBANES. I want to agree with the Senator from California when she said that nothing the Senator from New York said really negates her amendment. I think she is absolutely right. What we just saw was another example of what is taking place in the course of considering this legislation. An amendment was offered, which is focused fairly narrowly in its scope, directed at correcting a flaw in the legislation that is before us. The counter argument that then is made to the amendment is the whole universe. We go right back to the basic argument that, well, something is amiss here and we need to correct it. We have conceded we want to correct some things. But how far should the correction go? If you overcorrect, you are creating another problem.

Now, the problems the Senator from New York referred to when he cited the so-called professional plaintiffs—there are provisions in the bill to get at those. This amendment does not touch those provisions. There is a provision called no bonus to the named plaintiff, which has been going on, which we do not think ought to be happening. The lawyer cannot pay brokers for referring clients. That is in this bill. That is going to be prohibited. No one is seeking to take that provision out. Requiring the plaintiff to file a sworn certificate that he did not buy the stock in order to file the lawsuit, and requiring notice to class members that the lawsuit has been filed, they can ask the judge to take over the suit.

Those are all provisions designed to get at the kind of problem which the Senator from New York cited.

Now, the amendment of the Senator from California addresses a different issue. Those professional plaintiffs can be knocked out by all of those provisions that I am talking about. The

question now comes down to whether, when you pick the lead plaintiff, you ought to establish this presumption. And as the Senator says, it is supposedly a rebuttable presumption; but if you read carefully, it amounts to an irrebuttable presumption that it ought to be the wealthiest plaintiff.

I want to commend the Senator for offering this amendment. She does not preclude giving it to the party with the largest financial interest. In fact, it is permitted for the judge to consider that as one of the factors to be weighed. But it is not made the sort of dominant factor. I think it would bring a much greater balance and equity to the problem of selecting the lead plaintiff.

All of the horror stories that were outlined by the Senator from New York are addressed by other provisions that are in the legislation. Those are provisions that we are not seeking to amend in the consideration of this legislation.

Mrs. BOXER. I thank the ranking member again for his support on this. As a matter of fact, I say to my friend and my chairman that we say, first and foremost, the judge should look at the financial interests of the parties. So we, by virtue of listening, at first say absolutely it ought to be looked at. I agree, if it is a pension plan and there are no conflicts and all the rest, that would be fine. We are trying to protect small investors from a situation that actually would have developed in the Keating case and developed in the Avon case, where the largest investor had a clear conflict of interest, and you know that can only lead to injustice. I am putting it mildly.

Again, I make a plea to my colleagues to look at these amendments as they come before us, because I am just concerned that if this moves forward in the condition it is in, we are going to be revisiting it.

I urge my colleagues to be on the side that I think is the appropriate side, which is fairness, justice for individual investors, who may have their whole life, in a way, tied up in these investments.

My friend from New York, in his way—and he is very strong in his beliefs, and I respect that—said it is the fat cats that are being protected in the Boxer amendment. Well, that is laughable. The bill says the richest investor shall be the lead plaintiff. What the Boxer amendment says is, well, maybe sometimes. But there is nothing inherently god-like about the richest person. I think we should respect those who may not be rich but who are hanging on everything we do—maybe not tonight because maybe they cannot follow the argument—but believe me, if they are unfortunate and they have an experience like the Keating people did, they will be hanging on everything we did.

Mr. SARBANES. I want to say to the Senator that the assertion of making the argument is that the pension funds

are going to come forward in order to be the lead plaintiff. The fact of it is that, as the bill is written, there is nothing that assures that the pension funds will come forward. In fact, pension funds have been notorious for hanging back in terms of being the lead plaintiff.

So when this proposition is put forward in the legislation and it is then asserted or interpreted that this means the pension funds will come forward to be the lead plaintiff, there is no reason to suppose that will be the case. In fact, the lead plaintiff may well be an investor with a great financial interest in the litigation who has ties to management.

Mrs. BOXER. Right.

Mr. SARBANES. As exactly happened in the Keating case, as I understand the Senator from New York, or as other interests that may be different from the broad range of the class members.

So it is very important to understand that. I think the Senator from California, as I understand it, in effect, has said, let all the plaintiffs decide amongst themselves, or, alternatively, let the judge decide; and the judge, in deciding, should consider this list of factors. But it is up to the judge to make the decision. So you do not try to predetermine the outcome, as I think has been done in the legislation before us.

Mrs. BOXER. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from California has 5 minutes 46 seconds.

Mrs. BOXER. I retain that time.

Mr. D'AMATO. Mr. President, the hour is growing late and I do not intend to use all of my time.

Let me first make an observation that the person or entity who has the greatest financial interest, does not necessarily mean rich people. It does not mean that we want a fat cat.

Indeed, if we are talking about someone who is acting as a manager, we are talking about a class of people who, for the most part, are exactly the people who I would presume my colleague from California is interested in protecting, those people who have lost their entire investment portfolio, their 401 K., or their IRA. They are the people who I am concerned about.

Now, this amendment, if passed would knock out one of the most critical provisions of S. 240. We call it the most adequate plaintiff. Who is the most adequate plaintiff for the class? One of the areas of abuse which was pointed out time and time again was the strike suit lawyers who file these class actions by racing to the courthouse to file a complaint and using a whole host of professional plaintiffs to file the lawsuit.

I have to believe that the lawyer will continue to encourage that. Right now, an entrepreneur lawyer can draft a complaint, select one of his many ready prepared plaintiffs, and I have

read the list, and race off to the courthouse to file the complaint. Nine out of ten times the first lawyer who arrives at the courthouse with the complaints in hand will be chosen to represent the rest of the class. This is the lucrative race that lawyers stand to make between 30 to 35 percent of multimillion dollar coerced settlements. Do we want to continue that or do we want to stop that practice? Nine out of ten times the so-called named plaintiff has no idea that the suit has been filed. My colleague has not put any provisions in her amendment that will stop that race. We have. We have.

The professional plaintiff has no idea what is in that complaint, never mind pretending that this is the type of lead plaintiff who actually is aggrieved. They are not aggrieved. They have been working in cahoots with a cast of characters who are defrauding the public.

This is not the way our legal system should work. Plaintiffs who have been harmed, or have been defrauded should be able to file lawsuits to recover damages. Professional plaintiffs should not be allowed to clog up this system. S. 240 contains a provision to take care of these pernicious problems. It attempts to allow institutional investors who account for 51 percent of the market and who manage \$4.5 trillion of pension funds to serve as lead plaintiffs. Maybe they have not served in this capacity before because they have not had a chance, because they have not been fast enough to race into the courthouse and they only read about the lawsuits after they are filed and lead counsel has been appointed. Make no mistake about it, and it is not the intention of my colleague to bring this about, but this amendment will help perpetuate this system—the race to the courthouse.

By giving institutional investors an opportunity to more fully control and be involved in litigation, the class will have meaningful representation. We will have an institutional representative who represents hundreds of thousands of aggrieved parties control the case instead of someone who is looking for a quick buck and who is not helping the class but is helping himself. The members of the class can only wonder what happened when they get a check for 22 cents in the mail. I will tell you what happened, the lawyer made \$8 million and the class got 22 cents. Now, that is not right, but that is what is going on.

Now, what about the selection of a person who has a great financial interest or who represents the class that has the largest financial interest through a pension fund, an institutional investor.

We say there will be a presumption, a rebuttable resumption, and if there is no deficiency, the court will choose the counsel who represents the largest financial interest to lead the class. If

they do not meet the standards pursuant to the Federal rules of civil procedure, they will not be able to serve as lead plaintiffs.

There are a number of those provisions. Although the hour is late I will read a few of those Federal procedures.

Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if, first, the class is so numerous that joinder of all members is impractical; second, there are questions of law or fact common to the class; third, the claims of defenses of the representative parties are typical of the claims of defense of the class, and fourth, the representative parties will fairly and adequately protect the interest of the class.

That is called for in law.

The amendment offered today seeks to change the standard for selecting lead plaintiff. This amendment provides for those seeking to serve as lead plaintiff to decide unanimously who should serve as lead plaintiff. If there is no unanimous agreement, the court will pick the lead plaintiff based on certain factors. Those factors have nothing to do with the class. They are incredible.

They talk about how many times you brought class action suits, what the legal work to date has been. It says "financial interest in the relief sought," and after that, it is just a critique of lawyers who have brought these actions.

I cannot understand why we would put these considerations in—for the people to be chosen as the plaintiffs. I say this, because this was probably drafted by LeFrac and Company.

Mrs. BOXER. Will the Senator yield to me?

Mr. D'AMATO. No, I will not. I have listened patiently.

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. SARBANES. The Senator ought to yield to the author of the amendment.

Mr. D'AMATO. Section (B) is more interested in developing the qualities that one would look for as a lawyer, than the qualities of a good lead plaintiff.

Now, let me say why I say that, and I mentioned it before: (B) after considering all relevant factors including but not limited to financial interest in the relief sought, the section I am concerned with starts with work done to develop and prosecute the case.

Well, that the plaintiff is not doing. That plaintiff is not developing and prosecuting the case. "The quality of the claim." The plaintiff has not brought this claim; a lawyer brings the claim on behalf of these plaintiffs, it is up to the lawyer to assess the quality of the claim.

"Prior experience"—listen to this—that is why I say I believe this is the lawyer's protection amendment. "Prior experience representing classes." That does not seem to me to be looking out for the small investor. That seems to me to be selecting a lawyer. Why

should a small investor interested in representing the defrauded class have prior experience representing classes, unless he is a professional plaintiff. That is why I ask, how did this amendment come about?

I do see some good criteria in this amendment, possible conflicting interest. That is excellent. And, exposure to unique defenses. That is in the legislation. The same thing we have. Also for lead plaintiffs to serve as lead plaintiff of the appointed plaintiff class. I might more adequately suggest it should say pick the lawyer, because in the final analysis, it is the lead plaintiff, it is the plaintiff who is assigned, who picks the lawyer.

That is what I am concerned about. I am concerned about this amendment perpetuating the same scheme. Do I want to protect the little guy? Absolutely. I have told my colleague that if there are ways—and we have cooperated in the past to do this—to give greater protection to those who are aggrieved, I want to do it.

That is one of the reasons we have entered, at my colleagues' behest, the provisions giving the ability to those people who have \$200,000 or less and who sustain up to 10 percent, the ability to recover their losses. We do not just shut the door on the little guy.

My colleague mentioned a woman who lost \$25,000 and had no recourse, this bill would provide to that person an opportunity to recover those funds. I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I find it really incredible that my friend would say that this language is the lawyer protection act when, in fact, three of the six requirements that the judge has to look at are requirements that came from your side of the argument; namely they should look at the financial interests. In other words, whom is the biggest investor? That is my friend's point. We put it in here first. He is telling me that the lawyers whom he names want that in this bill? I tell you "no."

So I cannot understand how my friend could tell me that this section is the lawyers protection act when I put in as the first requirement a very important concept that comes from the opposing side. Maybe my friend wants to sit and talk to me about what he would accept that the judge could look at. If my friend from New York is willing, I would take out some of these, if he finds them objectionable, if he will support me on this. No one wrote this but me. Did I ask for help from my staff? You bet. I am not a lawyer. I have to make sure.

To me it sounds reasonable to think that the quality of the claim is important; that the arguments are laid out well. But if my friend thinks that is not a good thing and he will support me, I will take out those things he finds objectionable in a New York minute. I would do it.

So, tomorrow we finish this argument up. It is getting awfully late. Even I am losing my will to argue at 9 at night. So I would, at this time, be very happy to yield back my time, except if my ranking member wanted to make a few closing remarks, and I look forward to picking this debate up in the morning.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. D'AMATO. Mr. President, might I inquire of time remaining to both parties?

The PRESIDING OFFICER. The Senator from New York retains 27 minutes and 45 seconds. The Senator from California has 3½ minutes remaining of her time.

Mr. D'AMATO. Mr. President, I do not intend to use much of my time. I think I have made my point. I think we both made our points.

I believe as an unintended consequence—because I do believe my friend, the Senator from California, is interested in trying to protect small investors, particularly senior citizens—this amendment would not be a service to them. It would continue the race to the courthouse.

I find particularly difficult to accept that part of the amendment on page 3 starting at line 13, "work done to develop and prosecute the case, the quality of the claim, prior experience representing classes." That is absolutely the kind of language that suggests to me this amendment will continue the race to the courthouse.

If my friends and colleagues find ways to deal with an admitted concern of the Securities and Exchange Commission, who, for the most part is strongly supportive of what we are attempting to do in this bill, but recognizes that there are problems in the system, I will be happy to work with them. I might call to the attention of my colleagues a letter from the SEC, and I believe my distinguished ranking member, Senator SARBANES, has already called this letter to our attention:

One provision of Section 102 requires the court generally to appoint as lead plaintiff the class member that has the largest financial interest in the case. While this approach has merit, it may create additional litigation concerning the qualifications of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management or interests that may be different from other class members.

I hope in the managers' amendment we might be able to address that concern with some language. That is a concern I think many of us have. It would be good to clarify that all possible conflicts under all cases must be avoided.

We have to be careful because you do not want to unintentionally open the door to a different unintended consequence. Certainly I would have to strongly oppose my friend's legislation as it presently stands, because it would

continue, as I see it, the race to the courthouse.

Let me say this, if my colleague from California is prepared to yield her time, I will yield all of my time.

I yield.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I only have 3 minutes left. I want to make a point. This section deals with the plaintiffs. It does not deal with the lawyers. And the way I read it, if there has been a repeat of a plaintiff, the judge can throw out that plaintiff. So, my friend cites a section that deals with plaintiffs, not with lawyers.

His other point about a rush to the courthouse. If he thinks this Senator has a bill that is a rush to the courthouse, we took the language out of his bill. Mr. President, 90 days they have to file in a newspaper of general circulation. It is boilerplate language. It is the same exact timeframe as my friend from New York has. He says I am rushing to the courthouse, then he is rushing to the courthouse.

Again I have to say I know my friend vociferously opposes this. But I have not heard anything that makes me feel he has undermined my basic argument. If he wants to work on language I am happy to work on language.

I yield to my friend from Maryland.

Mr. SARBANES. If the Senator will yield, one of the provisions that the Senator from New York pointed to, that the Senator has listed, prior experience representing classes, could be used by the judge to disqualify plaintiff, not to qualify the plaintiff. The very plaintiffs you have cited who you said have represented—I do not know, seven times or whatever the number was—who were just buying professional plaintiffs.

Mr. D'AMATO. Fourteen.

Mr. SARBANES. All right, fourteen. He could be ruled out by the judge by considering that factor. It says, "after considering all relevant factors including prior experience representing classes." That could be a negative factor as well as a positive factor. It is up to the judge. That is the very thing you would argue to the judge.

You would say to the judge, "This person should not be the lead plaintiff. He has fourteen instances of doing this. He is just playing a game with you."

And the judge would say, "Oh, yes, you are right. And under the Boxer amendment I am entitled to consider that factor, prior experience representing classes, and considering that factor I am not going to make this person the lead plaintiff."

The Senator from California has in effect taken one of your contentions and put it in her amendment.

Mrs. BOXER. Yes. Yes. The Senator from Maryland is correct. Because this section does not talk about lawyers, it talks about the plaintiffs.

Mr. SARBANES. It does not say positively or negatively. That is for the judge to weigh.

Mr. D'AMATO. Mr. President, if I might?

The PRESIDING OFFICER. The Senator from New York is recognized.

The Senator from California retains 38 seconds.

Mr. D'AMATO. I have to tell you that is one of the most novel, interesting, intriguing arguments I have ever heard.

Mr. SARBANES. It is right there in black and white.

Mr. D'AMATO. I want to salute and take my hat off to my friend from Maryland for putting that twist on. Certainly, it is a stretch to read this as a disqualification. All relevant factors including but not limited to financial interest, work done, prosecution of case, quality of the case, prior experience. I suggest no one could really interpret this literally and say to the judge, "You should disqualify someone, if they have been in on two or three or four of these cases, from being considered as lead plaintiffs, or taking their vote or their determination, because they are professionals and have been doing it for years."

I have to agree with my colleague, could the judge do it? Sure. But I have not seen a judge exercise that kind of right to interpretation. Of course we have not passed this bill. But that certainly is unique and novel as an interpretation. I have to tell my colleague, "I could have some support for this amendment—and maybe we should put this provision in a managers' amendment—if it said we are going to look expressly at the qualifications to see that there are not professionals leading the class."

Of course, how do you really tell? You get into how do you define who "professional plaintiffs" are? There may be some people we classify as gadflies who bring these suits, not because they have been prompted by somebody but because they want to do what is right, to bring the case, maybe they have been aggrieved, maybe they do not have a great financial stake, but they think others have been aggrieved.

It is, I think, stretching—even beyond that limit to which most of us stretch, including this Senator at times—the credibility of this argument, to suggest you are really telling the court to look and see whether or not this person has been involved in multiple suits and therefore should be dropped.

I find that difficult to interpret in that manner. But I do say "It is novel. It shows great dexterity." And it shows, I believe, why we should not even get involved in this.

Mrs. BOXER. In my 38 seconds, Mr. President—

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. In this section the Boxer amendment lists 6 things. They are neither positive nor negative. My friend seems to think financial interest is a relief sought as a positive. I would think it is a negative. I could change it

to the number of times the plaintiff has represented a class. I am well meaning here. This section does not relate to lawyers. Even though my friend said it did does not make it so. Just read it. It has to do with who the lead plaintiff is.

If my friend is serious, we could work this out. We could have a good amendment. We could agree to it. We could pass it, and we could I think prevent a real problem from developing out there when we find ourselves in a situation where a co-defendant winds up as a lead plaintiff. I think that would be dangerous.

I yield the floor.

Mr. D'AMATO. Mr. President, I am very serious. If we cannot read this amendment to say financial interest and relief sought should be considered, what are we talking about? If work done to be developed and prosecute the case is considered—I mean you can obviously say, "Well, was there a lot of work done, or was not their work done?" But is that something obviously that should be taken into consideration? The quality of the claim—are we to say it is good quality? These are determinative factors that we will make. Are we using the English language or turning it upside down? Are we back to Alice in Wonderland now? I mean really, maybe the hour is late. But to suggest that by writing "prior experience representing a class", one would really say we are calling upon the judge to limit those people who serve often, if there have been those who have been representing a class over and over and in other suits, that would disqualify them. I think that is rather preposterous. If that is what the intent is, then we will need to spell it out. Maybe we should have spelled this out when we forth this legislation. But certainly, as I see it, it is difficult to believe that is the intent of this particular amendment.

Mr. SARBANES. If the Senator will yield, I mean the way the amendment is written it is absolutely neutral in terms of whether the judge shall consider the factor positively or negatively. It only says these are factors to be looked at, and the judge upon looking at the factor could weigh in a positive way or weigh it in a negative way. I mean I think the Senator has tried very hard to just lay out some items the judge should look at. The Senator tried in arguing against it to read it a certain way. But the amendment does not read a certain way. It is very clear on the face of the amendment.

Mr. D'AMATO. My friend and colleague, as I read it, these are conditions that the court will look at in making a determination. They are going to consider these factors. It says it quite clearly. We could argue about whether or not they should take them into consideration. Reasonable people can disagree.

Mr. SARBANES. Will the Senator say this amendment with respect to

considering financial interest in the relief sought—is that a plus or a minus?

Mr. D'AMATO. It is something that has to be considered. Obviously, it would seem to me that we should select someone who had a financial stake. That would be a factor, a positive factor. If something had been done in developing work, that would be a positive factor, and prior experience and exposure to unique defenses would be a positive factor. Why would you otherwise put these in the amendment? Then possible conflicts of interest, we read that as a negative factor, obviously. I think though that we go beyond.

We have had a good debate on this. I am prepared to yield back the balance of my time, and we can take this up tomorrow morning.

Mr. President, I yield the remainder of my time.

#### MORNING BUSINESS

Mr. D'AMATO. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak therein for up to 5 minutes each.

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 appropriate committees and a treaty.

(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-1118. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's fiscal year 1994 report on environmental compliance and restoration; to the Committee on Commerce, Science and Transportation.

EC-1119. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1120. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of

the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1121. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties entered into by the United States on April 20, 1995; to the Committee on Foreign Relations.

EC-1122. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Implementations of the Government Managers Accountability Act of 1995 and the Merit Personnel Law"; to the Committee on Governmental Affairs.

EC-1123. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Fiscal Year 1992 Annual Report on Advisory Neighborhood Commissions"; to the Committee on Governmental Affairs.

EC-1124. A communication from the Federal Co-Chairman of the Appalachian Regional Commission, transmitting, pursuant to law, the semiannual report of the Inspector General for the period October 1 through March 31, 1995; to the Committee on Governmental Affairs.

EC-1125. A communication from the Secretary of Defense, transmitting, pursuant to law, the semiannual report of the Inspector General for the period October 1 through March 31, 1995; to the Committee on Governmental Affairs.

EC-1126. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the semiannual report of the Inspector General and the Management Response for the period October 1, 1995 through March 31, 1995; to the Committee on Governmental Affairs.

EC-1127. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-63; to the Committee on Governmental Affairs.

EC-1128. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-64; to the Committee on Governmental Affairs.

EC-1129. A communication from the Inspector General of the Board for International Broadcasting, transmitting, pursuant to law, the semiannual report of the Inspector General for the period October 1, 1994 through March 31, 1995; to the Committee on Governmental Affairs.

#### 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. WARNER:

S. 965. A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the Albert V. Bryan United States Courthouse; to the Committee on Environment and Public Works.

By Mr. SIMPSON:

S. 966. A bill for the relief of Nathan C. Vance, and for other purposes; to the Committee on the Judiciary.

By Mr. LOTT (for himself, Mr. SMITH, Mr. SHELBY, Mr. BINGAMAN, Mr. HELMS, Mr. HOLLINGS, Mr. KEMPTHORNE, Mr. LIEBERMAN, Mr. FAIRCLOTH, Mr. DOLE, Mr. INHOFE, Mr. WARNER, and Mr. MCCAIN):

S. 967. A bill to provide a fair and full opportunity for recognizing with awards of military decorations the meritorious and valorous acts, achievements, and service performed by members of the Army in the Ia Drang Valley (Pleiku) campaign in Vietnam in 1965; to the Committee on Armed Services.

#### 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. Con. Res. 18. A concurrent resolution authorizing the Architect of the Capitol to transfer the catafalque to the Supreme Court for a funeral service; considered and agreed to.

By Mr. PACKWOOD:

S. Con. Res. 19. A concurrent resolution to correct the enrollment of the bill H.R. 483; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WARNER:

S. 965. A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, VA, as the Albert V. Bryan United States Courthouse; to the Committee on Environment and Public Works.

ALBERT V. BRYAN UNITED STATES COURTHOUSE ACT

Mr. WARNER. Mr. President, I introduce legislation to transfer the name of the Albert V. Bryan United States Courthouse to the New Federal courthouse in Alexandria, VA.

The current Federal courthouse at 200 South Washington Street in Alexandria, Virginia bears the name of one of Virginia's most distinguished jurists, Albert V. Bryan.

My legislation simply ensures that when the new courthouse is opened it shall be known as the Albert V. Bryan United States Courthouse.

Mr. President, the recognition of the many accomplishments and contributions of Judge Bryan to his chosen profession—the law—and to his community is not a new matter for this body.

On October 9, 1986, the Senate passed by unanimous consent S. 2890 to designate the Federal courthouse in Alexandria in honor of Judge Bryan's lifetime of public service. Since 1987, the Alexandria courthouse has carried his name.

Appointed to the U.S. district court in 1947 by President Truman and promoted to the appeals court by President Kennedy in 1961, Judge Bryan developed a record as a legal conservative and a strict constructionist. He was known for his tolerance on the bench, demonstrating reluctance to cut off lawyers in mid argument, and reacting sternly to those who flouted his judicial orders.

Throughout his 37 years on the Federal bench, Judge Bryan was known to be fair, firm, and thorough. His was a low-key personality, his demeanor