

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

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

Mr. REID addressed the Chair.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

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

The bill clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

In the so-called Contract With America, that is what they talk about—returning as much back to the States as they could. But here we are, Mr. President, now talking about tort reform and standing that issue on its head. Instead of returning everything back to

the States, we are saying in this area that we do not want the States to prevail, we want to have a national standard, which is really unusual to me to find out how people could reason that way.

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

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

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

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

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

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

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

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

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

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

crimes, and even by those who sell drugs to children.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Over the past few years we have seen an unfortunate entrance into the market of too many dangerous products that are marketed toward women: The Dalkon shield, the Copper-7 IUD, DES,

silicon breast implants, are just a few of the alarming examples of dangerous products placed into the market that affect women. Why should there be some arbitrary standard now established that affects those cases? There should not be. It is wrong. To come up with a standard called "conscious, flagrant indifference to safety" is almost unconscionable. So a vote for the substitute is to vote to eliminate the existing legal incentives for companies to produce the safest possible products.

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

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

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

There is a lack of uniformity. Proponents of this measure claim it will establish uniformity in product liability law. In reality, it creates prodefendant disuniformity. It is a one-way preemption at its worst. The amendment only preempts those State laws which favor consumers. How? It imposes an arbitrary cap on punitive damages in those States which allow it but it does not create punitive damages in those States which do not allow it. So in my earlier statement when I talked about the State of Washington having to now have an award given for

punitive damages, some of those who are looking at this legislation say, "That is absolutely wrong. In fact, if your standards are less than what is in the bill you can keep those." How unfair. It also establishes an arbitrary statute of repose for 20 years but allows States to impose shorter limitations if they so desire.

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

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

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

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

The PRESIDING OFFICER. The Senator from Mississippi.

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

The PRESIDING OFFICER. The Senator is correct.

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

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

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

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

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

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

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

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

Let me clarify this joint and several issues. It is amazing how things can be turned around in the debate here in the Senate. Joint and several—what does that mean? That means when you file a lawsuit, you file a lawsuit against everybody remotely connected or even in

the area when you are wanting to sue and recover damages. But even though you were only remotely involved, like say maybe 5 or 10 percent of the damages attributable to you, if the other defendants are broke, you can be forced to pay the entire judgment. It is called deep pockets. If you happen to be in the area and you happen to be a successful company or an individual, you are the one who will get hit even though you were just involved to a very small degree. We are saying there ought to be some sensible limit there. You ought to pay for the damage you caused but not pay for everybody. It makes such good common sense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I do not mean to suggest that anyone who finds fault with some provision of H.R. 956 does so from an unworthy motive. Reform of product liability laws is a complicated matter, and there are legitimate questions as to how far one or another reform should be taken. I will candidly admit that this bill does not go as far as I would like it to. But I understand that some of its supporters do not wish to broaden its provisions. De-

spite our disagreement in that regard, we agree on the need for reform and are forthrightly working together toward common ground.

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

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

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

Mr. President, I yield the floor at this time and, observing no other Senator who wishes to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

First, I think I stated in the beginning of the debate that I considered this to be an extremely unfair bill. While it was titled the "Product Liability Fairness" bill, there were numerous provisions that were one-sided and which attempted to take away rather basic rights of a claimant in a lawsuit, and I thought it was extremely unfair. Also this bill was un-

fair because of the fact that it exempted all commercial loss and made commercial loss come under the category of commercial or contract law, primarily the Uniform Commercial Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So we still have the difference between the 55-year-old CEO who is killed, at \$100 million; and we have, for the elderly or the housewife, maybe

zero, and maybe \$10,000 for funeral expenses.

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

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

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

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

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

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

Now it appears in the substitute that the Dewine exemption applies in all civil cases—not just product liability

cases—against an individual whose net worth does not exceed \$500,000 or a partnership, corporation, so on—but it has as its cap, two times the sum of the economic damages and the noneconomic damages—still Snowe—or \$250,000, but then it has the language which says, “which amount is lesser.”

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

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

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

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

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

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

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

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

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

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

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

So, therefore, a city or county, State government or Federal Government which has a claim arising out of this, or property damage, may have some claim in regard to subrogation rights under certain circumstances and would

also include the Federal Government. Therefore, they come within the purview of this relative to all of the provisions that are in this substitute, including the misuse and alteration of a product by any person, not the claimant himself. He might not have anything to do with it. But they are entitled to a reduction in regard to the percentage of fault in regard to misuse or alteration.

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

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

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

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

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

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 709 TO AMENDMENT NO. 690

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

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The new Rockefeller-Gorton proposal on alternative dispute resolutions simply set up a set of rules under which States will conduct their own alter-

native dispute resolution proceedings. We do not override State rules on ADR, alternative dispute resolutions, except with respect to the time with which they must be commenced. So the only places in which these rules would be more or less mandatory are in that tiny handful of States that have no ADR provisions whatsoever.

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

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

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

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

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

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

There is one other major difference and that other major difference is a criticism which the Senator from Alabama made just a few moments ago against the Coverdell amendment; that is, there is no attempt in this bill to extend these punitive damage rules or limitations to cases other than product liability. In other words, that portion of the Dole amendment of last week

which was left in the Coverdell substitute is now gone. This bill now applies to punitive damage cases only, as it did when it was reported by the Commerce Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mrs. MURRAY addressed the Chair.

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

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

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

Mr. HEFLIN. Yes.

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

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

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

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

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

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

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. I yield the floor.

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

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

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

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

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

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

It is unfair to require only the victims of noneconomic losses—such as a woman who has lost the ability to bear children, or a child disabled in his youth—to bear the burden of pulling

all the defendants who caused them harm into court.

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

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

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

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

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

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

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

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

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

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

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

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

As the Seattle Times editorialized just last week:

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

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

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

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

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

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

[From the Seattle Times, Apr. 30, 1995]
FEDERAL TORT REFORM USURPS STATES RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Mrs. BOXER addressed the Chair.

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

Mrs. BOXER. Mr. President, I want to associate myself with my colleague from Washington, Senator MURRAY, be-

cause I think that she, as she usually does, puts her finger on real people.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the punitive damages, which is two times compensatory damages, he gets \$1.35 million.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

looking at the facts of what this bill will do.

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

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

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

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

The role of the Senate is to be a deliberative body. We are not a body that votes aye and nay, and the majority

rules in the event a person desires to take advantage of the rules. You have the cloture situation. So what is really at stake here is an issue in regards to the role of the Senate and the rules of the Senate.

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

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

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

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

The PRESIDING OFFICER. The Senator from South Carolina.

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

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

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

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

under our Government for a jury of your peers.

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

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

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

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

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

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

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

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

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

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

This insulting reference that this bill ought to just whip right on through, they do not believe in it themselves, or their own manufacturers that they represent. They do not believe it by way of contractors, because the contractors are sending everything back to the people. This bill is to take it away, take it away from the people; bring it to the Washington bureaucrats on the one hand, and take away the rights of trial

by jury on the other. You do not just outright abolish the seventh amendment. You nibble at it. You nibble at it. You just erode it like a rat just gnawing at it gradually. Yes, get rid of punitive damages. Get rid of joint and several liability. Limit the evidence that goes in. Get a bifurcated—a divided—proof of actual and proof of punitive. Go right on down the list. Give them the English rule.

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

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

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

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

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

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

Let us look at that so-called English rule that they have on another bill that they hope to put in in conference. I will never forget one case I had before I got elected to the Senate. In fact, it was settled after I got out of the law practice and in the Senate. My law

partner and I were the only two who tried the case. There was a firm of 12 lawyers in Charleston. There was a firm of 17 lawyers in Columbia. There were some from New York that came in. They had 20-some lawyers. They had to get three tables. And just he and I had an injured party and we were trying the case.

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

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

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

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

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

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

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

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

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

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

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

Mr. President, of all civil filings, torts represent 9 percent, and of those tort filings only 4 percent of the 9 percent, are product liability cases—.38—thirty-eight one-hundredths—percent. And this thing has taken 2 weeks now. To do what? To take it away from the States that have had jurisdiction for 230 years, the English law and everything else of that kind, or the regular

statutes, the regular burdens of proof, the greater weight of the preponderance of evidence, all 12 jurors have to find it and on appeal and everything, injured party on a contingent basis. It has worked. The States themselves over the past 15 years have reformed their laws, and there is no question in my mind that they are handling it and handling it well. My judges tell me so, particularly my Republican judges that we have confirmed that I am proud of because I voted for their confirmation.

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

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

VISIT TO THE SENATE BY PRIME MINISTER OF ISRAEL YITZHAK RABIN

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

RECESS

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

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate resumed consideration of the bill.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

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

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

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

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I would also ask unanimous consent that the pending Gorton substitute be modified

to reflect to "Strike all after the first word, and insert," and on page 20, line 6, strike "or (2)" and on line 14, strike "or (2)".

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

The PRESIDING OFFICER. Objection is heard.

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

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

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

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

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

The resolution is as follows:

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

Whereas President Harry S. Truman proclaimed May 8, 1945 to be V-E Day;

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

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

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

The Senate proceeded to consider the resolution.

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

Mr. HOLLINGS. Senator THURMOND.

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

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