reports in 2002 that in some circumstances such cells can fuse. Fusion might give a false appearance of metadifferentiation, the argument ran, therefore adult stem cells are not really multipotent, and are a nonstarter as an alternative to embryonic stem cells.

Fortunately, for the now highly expectant patient, reports of the death of adult stem cells were greatly exaggerated. Much research (some indeed antedating the fusion excitement) clearly shows that although fusion can and does occur in certain tissues, adult (say) bone-marrow-derived stem cells can also generate multiple lineages without cell fusion. Interestingly, fusion may be an unexpected mechanism of achieving repair, and could additionally offer means of delivering gene therapy. Normal (bone-marrow-derived) donor nuclei were found in the muscle of a patient with Duchenne muscular dystrophy, over a decade after bone-marrow transplantation for immune deficiency, offering proof of principle for fusion of bone-marrow-derived stem cells as gene therapy, and presenting tantalising therapeutic prospects. Also, it is now clear that aneuploidy represents a not uncommon, spontaneous, and normal process, rather than necessarily carrying sinister implications, as speculated.

Suggestions of low rates of differentiation of bone-marrow-derived stem cells and integration in situ, and of questionable differentiation, have also been addressed. Perhaps the most compelling (and extraordinary) evidence unambiguously confirming the ability of adult bone-marrow-derived stem cells not only to metadifferentiate but also to integrate fully into adult (human) organs, and survive for decades, comes from postmortem studies of sex-mismatched recipients of bone-marrow transplants, showing donor-derived fully differentiated neuronal cells of a highly complex morphology apparently fully functionally established within the host brain, with no evidence of fusion.

We now know that bone marrow-derived stem-cells circulate systemically and actively migrate into damaged tissue to contribute to spontaneous repair. Experimentally, therapeutic benefit occurs in numerous disease models but, importantly, repair by bone-marrow-derived stem cells does not stop at the laboratory door. Safety data from 50 years of clinical bone-marrow transplantation, during which nonhaemopoetic stem cells have inadvertently also been transplanted, and the accompanying clinical expertise in collecting, handling, freeze-storing, thawing, and delivering marrow, have safety allowed a rapid translation of bone-marrow-stem-cell science from laboratory to clinic. Controlled trials have shown significant benefit of marrow-derived stem-cell therapy in myocardial infarction, and trials are planned or underway in chronic cardiac failure, stroke, and other diseases: reports of successful adult stem-cell therapy in myocardial infarction, and trials are planned or underway in chronic cardiac failure, stroke, and other diseases: reports of successful adult stem-cell therapy in patients with corneal disease have just appeared. The next few years, not decades, will show whether adult stem-cell treatments are to join the mainstream therapeutic arsenal.

EXHIBIT 3

BENEFITS OF STEM CELLS TO HUMAN PATIENTS—ADULT STEM CELLS V. EMBRYONIC STEM CELLS (PUBLISHED TREATMENTS IN HUMAN PATIENTS)

ADULT STEM CELLS: 65—ESCR:0

Cancers

1. Brain Cancer
2. Retinoblastoma
3. Ovarian Cancer
4. Skin Cancer: Merkel Cell Carcinoma
5. Testicular Cancer
6. Tumors abdominal organs Lymphoma
7. Non-Hodgkin's Lymphoma
8. Hodgkin's Lymphoma
9. Acute Lymphoblastic Leukemia
10. Acute Myelogenous Leukemia
11. Chronic Myelogenous Leukemia
12. Juvenile Myelomonocytic Leukemia
13. Cancer of the lymph nodes: Angioimmunoblastic Lymphadenopathy
14. Multiple Myeloma
15. Myelodysplasia
16. Breast Cancer
17. Neuroblastoma
18. Renal Cell Carcinoma
19. Various Solid Tumors
20. Soft Tissue Sarcoma
21. Waldenstrom's macroglobulinemia
22. Hemophagocytic lymphohistiocytosis
23. POEMS syndrome

Auto-Immune Diseases

24. Multiple Sclerosis
25. Crohn's Disease
26. Scleromyxedema
27. Scleroderma
28. Rheumatoid Arthritis
29. Juvenile Arthritis
30. Systemic Lupus
31. Polychondritis
32. Sjogren's Syndrome
33. Behcet's Disease
34. Myasthenia
35. Autoimmune Cytopenia
36. Systemic vasculitis
37. Alopecia universalis

Cardiovascular

38. Heart damage

Ocular

39. Corneal regeneration

Immunodeficiencies

40. X-Linked hyper immunoglobuline-M Syndrome
41. Severe Combined Immunodeficiency Syndrome
42. X-linked lymphoproliferative syndrome

Neural Degenerative Diseases/Injuries

43. Parkinson's disease
44. Spinal cord injury
45. Stroke damage

Anemias/Blood Conditions

46. Sickle cell anemia
47. Sideroblastic anemia
48. Aplastic Anemia
49. Amegakaryocytic Thrombocytopenia
50. Chronic Epstein-Barr Infection
51. Fanconi's Anemia
52. Diamond Blackfan Anemia
53. Thalassemia Major
54. Red cell aplasia
55. Primary Amyloidosis

Wounds/Injuries

56. Limb gangrene
57. Surface wound healing
58. Jawbone replacement
59. Skull bone repair

Other Metabolic Disorders

60. Osteogenesis imperfecta
61. Sandhoff disease
62. Hurler's syndrome
63. Krabbe Leukodystrophy
64. Osteopetrosis
65. Cerebral X-linked adrenoleukodystrophy.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 397, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Pending:

Frist (for Craig) amendment No. 1605, to amend the exceptions.

Frist amendment No. 1606 (to amendment No. 1605), to make clear that the bill does not apply to actions commenced by the Attorney General to enforce the Gun Control Act and National Firearms Act.

Reed (for Kohl) amendment No. 1626, to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 1626

Mr. CRAIG. Mr. President, we are back on this very important piece of legislation, S. 397, the Protection of Lawful Commerce in Arms Act.

Under a unanimous consent agreement entered into last evening, we are on the Kohl trigger lock amendment. I understand there is an hour equally divided, and we hope we can get to a vote on this before 12:30. This is an important amendment, which I am confident Senator KOHL will be here in a few moments to discuss.

In the short term, let me visit the broader issue of the bill itself. We now have 62 cosponsors. I am pleased Senator CONRAD has joined us in support of this important piece of legislation to limit predatory and junk lawsuits from attempting to destroy the capability of the private sector to produce legal, effective firearms for our Nation's citizens and for our police and military. Unlike most nations, we are a nation that does not have a government company or a government manufacturer of firearms. It has always been the responsibility of the private sector. They have done extremely well. Innovation and creativity has always allowed the latest and best firearm capability, not only for our private citizens but for the military and police departments and the armed services that contract with these private sector companies to produce not only the firearms but the effective ammunition for them.

Some years ago, we saw a frustration growing in the gun control community that the public and the Congress collectively would not bend to their wishes. The public, in its inevitable wisdom, recognized that guns were not an issue in deaths caused by guns or in the commission of crimes, but the criminal element was the issue and that we ought to get at the business of law enforcement and taking those off the streets who used a gun in the commission of a crime. That is exactly what this administration has done in the last 5½ years. The use of a firearm or criminal activities in which a firearm is used has rapidly dropped in the last

6 years because this Justice Department has said, clearly, they will enforce the law.

The law is basically if you use a gun in the commission of a crime, you do the time. You don't get to plea bargain it away and go back to the streets to reengage as a criminal to once again misuse your rights as a citizen in a violent or criminal activity.

Because the anti-gun community didn't get it their way, they, over the years, have determined that they could use the legal system, the court system, to bypass and suggest that the third party, or the manufacturer, even though he or she was a law-abiding company and produced under the auspices of the Federal laws in responsible ways in that those products were sold through federally licensed firearms dealers, that wasn't good enough. Somehow you had to pass through and say that the crime and the fallout of crime was going to get paid for in some way by these responsible citizens who were building a legal and responsible product. That is the game—I say that—that has been played.

As a result, these legal, law-abiding manufacturers and citizens have increasingly had to pay higher and higher legal costs to defend themselves in lawsuit after lawsuit that have, in almost every instance, been denied and thrown out of court by the judges when filed largely by municipalities who, obviously frustrated by gun violence in their communities, chose this route. Instead of insisting that their communities and prosecutors and law enforcement go after the criminal element, they, in large part, in their frustration, looked for an easy way out. That has brought this legislation to the floor to limit the ability of junk or abusive kinds of lawsuits in a very narrow and defined way, but in no way—and I have said it very clearly—denying the recognition that if a gun dealer or a manufacturer acted in an illegal or irresponsible way or produced a product that was faulty and caused harm or damage, this bill would not preempt or in any way protect them or immune them from the appropriate and necessary legal sentence.

That is what we are about. I see that the sponsor of the trigger lock amendment is on the Senate floor.

Before I relinquish the floor, I ask unanimous consent to print in the RECORD a letter from the Department of Defense as to the importance of this issue, the Acting General Counsel of the Department of Defense speaking to the importance of S. 397 in safeguarding and protecting these gun manufacturers that produce a large amount of our firearms and weapons for all of our men and women who serve in harm's way in defense of our freedoms.

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

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, July 27, 2005.

Hon. JEFF SESSIONS,
U.S. Senate,
Washington, DC.

DEAR SENATOR SESSIONS: This responds to your request for the Department of Defense's view on S. 397 a bill to "prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms ammunition for damages, injunctive or other relief resulting from the misuse of their products by others."

The Department of Defense strongly supports this legislation.

We believe that passage of S. 397 would help safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and women in uniform.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this letter for the consideration of the community.

Sincerely,

DANIEL J. DELL'ORTO,
Acting.

Mr. CRAIG. In the last few days, I have found interesting editorials in the Wall Street Journal. They get it. They understand it. They have put it very clearly as to the reality of this bill, that is not just for the protection of law-abiding citizens but recognizing that tort reform is necessary. When the Congress can't do it in sweeping ways, we have chosen targeted ways to get at the misuse of our court system in large part by the trial bar.

I ask unanimous consent to print those in the RECORD as well.

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

[From the Wall Street Journal, July 27, 2005]

GUN LIABILITY CONTROL

If we recall correctly, it was Shakespeare who wrote "the first thing we do, let's kill all the lawyers." That's going too far, but the Senate can do the metaphoric equivalent this week by voting to protect gun makers from lawsuits designed to put them out of business.

Senate Republicans say they have 60 votes to pass the Protection of Lawful Commerce in Arms Act, which would protect gun makers from lawsuits claiming they are responsible for crimes committed with their products. The support includes at least 10 Democrats, which speaks volumes about the political shift against "gun control" in recent years.

The "assault weapons ban" expired with a whimper last year. State legislatures have been rolling back firearm laws because the restrictions were both ineffectual and unpopular. Gun-controllers have responded by avoiding legislatures and going to court, teaming with trial lawyers and big city mayors to file lawsuits blaming gun makers for murder. Companies have been hit with at least 25 major lawsuits, from the likes of Boston, Atlanta, St. Louis, Chicago and Cleveland. A couple of the larger suits (New York and Washington, D.C.) are sitting in front of highly creative judges and could drag on for years.

Which seems to be part of the point. The plaintiffs have asked judges to impose the sort of "remedies" that Congress has refused to impose, such as trigger locks or tougher restrictions on gun sales. Some mayors no doubt also hope for a big payday. But short of that, the gun-control lobby's goal seems to be keep the suits going long enough to drain profit from the low-margin gun industry.

Gun makers have yet to lose a case, but these victories have cost more than $200 million in legal bills. This is a huge sum for an industry collectively smaller than any Fortune 500 company and that supports 20,000 jobs at most. Publicly listed companies such as Smith & Wesson have seen the legal uncertainty reflected in their share price. Money for legal fees could be better spent creating new jobs, researching ways to make guns safer, or returning profits to shareholders.

Congress has every right to stop this abuse of the legal system, all the more so because it amounts to an end-run around its legislative authority. A single state judge imposing blanket regulations on a gun maker would effectively limit the Second Amendment rights of gun buyers across the nation. Liability legislation would also send a message that Congress won't stand by as the tort bar and special interests try to put an entirely lawful business into Chapter 11.

The gun makers aren't seeking immunity from all liability; they would continue to face civil suits for defective products or for violating sales regulations. The Senate proposal would merely prevent a gun maker from being pillaged because a criminal used one of its products to perform his felony. Murder can be committed with all kinds of everyday products, from kitchen knives to autos, but no one thinks GM is to blame because a drunk driver kills a pedestrian. (On the other hand, give the lawyers time.) To adapt a familiar line, guns don't kill industries; lawyers do.

[From the Wall Street Journal, July 27, 2005]

SENATE MOVES CLOSER TO SHIELDING GUN MAKERS FROM NEGLIGENCE SUITS

(By David Rogers)

Cashing in its election gains, the gun lobby was the big winner in a 66–32 Senate vote that moves Congress closer to enacting legislation that would shield the firearms industry from lawsuits charging negligence in the manufacture or distribution of weapons and ammunition.

Majority Leader Bill Frist (R., Tenn.) vowed to complete Senate passage before the August recess, which is to begin this weekend. Minutes after the vote, the White House warned that any amendment that "would delay enactment of the bill beyond this year is unacceptable."

The action came as House-Senate negotiators reached agreement on a $26 billion-plus natural resources budget last evening that would cut funding for clean-water and lands-conservation programs after Oct. 1. The Environmental Protection Agency is directed to complete a rulemaking on human toxicity studies, important to the pesticide industry, within 180 days, but the agreement prohibits any use of pregnant women, infants or children as part of such studies.

The Senate gun bill, as drafted, seeks to bar third parties from bringing civil-liability actions against manufacturers, distributors or dealers for damages from the unlawful misuse of a qualified product. People directly harmed in a firearms incident still would be able to sue, but the standard for charging negligence is so tightly written that critics say it would be difficult to prevail.

The National Rifle Association's goal is a clean Senate bill that the House can send on to President Bush quickly for his signature.

Gun-liability legislation has twice before passed the House, and the NRA now hopes to grind down the Senate opposition, which has stymied the gun lobby over the past five years.

In March 2004, for example, the NRA withdrew its support for a Senate bill when opponents successfully attached gun-control amendments unacceptable to the lobby. Eight months later, the NRA wrought vengeance at the polls, helping to defeat then-Democratic Minority Leader Tom Daschle in South Dakota and picking up a total of four Senate votes for its position.

The changed climate is demonstrated by the fact that Democratic Sen. Robert Byrd, up for reelection next year in West Virginia, added his name to the co-sponsors this week. Sen. John McCain (R., Ariz.), who still harbors presidential ambitions, also has become a co-sponsor since the last Congress. And Mr. Daschle's leadership post now is filled by Nevada Sen. Harry Reid, a strong NRA ally and one of 12 Democrats to support the lobby yesterday.

At a time of war in Iraq and Afghanistan, both Sen. Frist and the White House have cast the fight as a matter of national security, given the threat of ''frivolous lawsuits'' against firearms manufacturers who are part of the larger military establishment. The same protections also would extend to dealers and distributors, who have no real role in national defense. Dennis Henigan, legal director of the Brady Center to Prevent Gun Violence, said the framing of the issue was ''classic misdirection'' to narrowly focus on a few manufacturers.

Critics argue that laws governing the distribution of firearms are too lax and that only by applying broader tort standards of negligence can dealers be held accountable for showing inadequate diligence to secure their products or determine the real buyer in straw transactions. ''Clearly, this is an attempt to achieve sweeping legal immunity, the kind that can only be dreamed about by other industries,'' Mr. Henigan said.

The NRA's victory was all the more striking because it required the Senate to set aside debate—perhaps until September—on a $441.6 billion defense-authorization bill for the fiscal year that begins Oct. 1. Democrats chided Republicans for sacrificing national interests for the ''special self-interests'' of the gun lobby, a powerful political ally. But Mr. Frist had effectively locked himself into a position where he felt compelled to proceed on the gun bill as a show of strength as party leader.

In fact, Mr. Frist's hope had been to cut off debate on the defense bill and complete its passage by tonight, before turning to the gun legislation. That strategy had the double advantage of helping the White House avoid a protracted fight over base closings and its treatment of military detainees in the war against terrorism.

On a 50–48 roll call, the leader fell 10 votes short of the 60-vote supermajority needed to limit debate. A large part of his losing margin can be explained by the fact that seven Republicans broke ranks, including Sen. McCain, a former prisoner of war in Vietnam who has a big stake in the debate on setting a more uniform policy for the treatment of detainees.

Among accounts in the natural-resources budget bill, modest increases are provided for Indian health services and forest programs. The EPA's budget is cut almost $200 million below present funding, and lawmakers both trimmed their own home-state projects and denied two-thirds of the funds sought for an arts and humanities initiative backed by first lady Laura Bush.

Mr. CRAIG. I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, if we are going to give gun dealers immunity from lawsuits, then I believe we should insist they take every safety precaution available when selling firearms. This amendment goes a long way to help reduce the number of accidental shootings, particularly among the most vulnerable members of our society, our children, by requiring dealers to sell a safety device with all handguns. We have all read troubling stories about lives cut short by accidental shootings and teen suicides. They are made all the more terrible by the knowledge that many were preventable. The annual number of firearm injuries and deaths involving children is startling.

According to the most recent stats available, thousands of people are injured every year in accidental shootings, including more than 800 gun-related tragedies that resulted in death. In addition, it is estimated that every 6 hours, a young person between the ages of 10 and 19 commits suicide with a firearm. In all, 13,053 children were injured by firearms in 2002. Securing the firearm with a child safety lock could have prevented many of these tragedies. The sad truth is that we are inviting disaster every time an unlocked gun is easily accessible to children.

Eleven million children live in households with guns, and in 65 percent of those homes, the gun is accessible to the child. In 13 percent of them, the gun is left loaded and not locked. This amendment will help address this problem. It requires that a child safety device be sold with every handgun. These devices vary in form, but the most common resembles a padlock that wraps around the gun trigger and immobilizes it. Trigger locks are already used by tens of thousands of responsible gun owners to protect their firearms from unauthorized use, and they can be purchased in virtually any gun store for less than $10.

The Senate has already expressed its support for the sale of trigger locks with handguns, most recently last year, when 70 Senators voted in favor of this exact same amendment.

The mandatory sale of trigger locks is equally supported in the rest of the country and the law enforcement community. Polls have shown that between 75 and 80 percent of the American public, including gun owners, favors a mandatory sale of safety locks with guns. In a recent survey of 250 of Wisconsin's police chiefs and sheriffs, 91 percent agreed that child safety locks should be sold with each handgun.

The current administration has indicated its support for this concept. During his campaign in 2000, President Bush indicated that if Congress passed a bill making the sale of child safety locks mandatory with every gun sale, then he would sign it.

All of these people agree that we should be doing everything within our power to promote the use of locks or other safety devices with handguns. Nobody has ever claimed that this would be a total panacea. To be sure, it will not prevent every single firearm-related accident. But its importance cannot be overstated. Stats show that those who buy locks are more likely to use them. And when they are used, they do prevent accidental deaths. While imposing a minimal cost on consumers, it would prevent the deaths of many innocent children every year, which is a small price to pay. The Senate spoke overwhelmingly in favor of this type of proposal just last year. We should do so again today.

I strongly urge my colleagues to support this amendment. I ask unanimous consent that the following Senators be added as cosponsors of the amendment: Senators BOXER, MIKULSKI, CORZINE, and LAUTENBERG.

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

Mr. KOHL. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I commend Senator KOHL for this amendment. He has worked with so many of our colleagues to ensure that children are adequately protected. There are too many deaths each year of children because the weapons are unsecure. They are able to get access to them, and they are able to discharge them. There are accidental deaths. Sadly, there are too many childhood suicides that result from having access to weapons.

The Kohl amendment is a practical and appropriate response to that by requiring the sale of a child safety lock along with the weapon. There is huge public support for this issue. Over 70 percent of Americans polled think this is an appropriate and necessary proposal. In fact, I believe 6 out of 10 gun owners similarly believe this is a sensible approach to dealing with the issue of the accidental death of children with firearms.

We are here today to move forward on this amendment, to have a vote which is scheduled. I would hope, also, that we can move to other amendments so they could be offered for votes. Several of my colleagues have offered amendments. It is appropriate, since we have begun the process of debate and amendment and vote, to continue that process forward. I hope we can do that.

I certainly commend Senator KOHL for his efforts over many years. As he rightfully points out, there was overwhelming support for this measure last year. More than 70 Senators supported it. I hope we see that same support this year. Certainly, the danger to children has not diminished from the last Congress. The practicality and efficacy of this approach continues to be compelling. I would hope we would have another strong vote in support of the amendment, as we go forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, a trigger lock does not a safe weapon make. A trigger lock can lay right beside a firearm. Unless it is inserted and locked, the firearm is still accessible. You can sell a firearm. You can demand that there be a trigger lock. Yet still someone who is irresponsible in the storage and/or use of a firearm can cause that firearm, by the absence of a trigger lock or the absence of a safe storage place, to be harmful to a child. That is reality.

Sometimes we stand on the floor of the Senate and think we can fix the world by simply writing a law. I am not, by that statement, questioning the sincerity of Senator KOHL. Last year, his amendment got 70 votes in the Senate. At the same time, it is a mandate. In that mandate, have you created a safer world? I am not sure.

I do know this: I do know what creates a safer world. That is an awareness, an understanding of and an educational process of how you, in fact, create a safer world. Gun manufacturers know that. Licensed and responsible firearms dealers know that. Today, more than 90 percent of the new handguns already sold in the United States have a safety device attached to them or that comes with it that is part of the sales package.

So already, clearly, the educational process has gone forward. There are several national private organizations out there who have constantly and repetitively taught young people about the misuse of firearms. The Eddie Eagle program of the National Rifle Association educates thousands and thousands of young people each year to stay away from a firearm if they see one, to report it if they see one and, obviously, to seek an adult's knowledge about it.

Still, tragically enough, a child's curiosity in a misplaced firearm can cause accidents; it always has and, even with the passage, tragically enough, of the Kohl amendment, if it becomes law, it always will. You cannot create the perfect world. It is simply an impossibility to do. We try, and we try to at least shape that world in a way that makes it safer. But there is a reality I think all of us clearly understand. The statistics, though, while alarming if it is even one child, are dramatically improving. I think it is important to say on the record what the facts are. Unintentional firearm deaths—this is from the National Safety Council records. In 2001, there were 802 total; 15 of those 802 were under the age of 5 years; 57 were from 5 years old to 14 years old. That is that phenomenal time of curiosity among young children. No question about it, if that trigger lock was in place, a life might have been saved. I don't question that either. But then again, you have to get the adult who has the responsibility with that firearm to put the trigger lock in place. It is not automatically attached or automatically activated. It has to be humanly attached and humanly activated. There were 110 of the 802 deaths from age 15 to age 19. My guess is, unintentional, yes, by statistical fact it was. But again, that is an age when young people ought to know, ought to have been trained, ought to have had some level of education about the understanding of the safe use of a firearm. From age 20 to 24, there were 96 of the 802. Age 25 to 45, there were 268 accidental, unintentional deaths of the 802 total in 2001; and age 45 to 64—these are, without question, mature adults who clearly ought to understand and, yet, unintentional, accidental firearm deaths numbered 177. That was out of the 802 total in 2001. In 2002, it was 800. In 2003, it dropped to 700.

The point is this: From 1992 to 2003, there has been a 54-percent decline in accidental, unintentional deaths caused by firearms. Something is beginning to work out there, because gun ownership continues to go up in our country. So there is, without doubt, an educational process underway about the importance of handling a firearm appropriately and correctly, using safety devices when that firearm is in storage or nonuse, and in a way that is protecting. The 90-percent sales of trigger locks today on new weapons, new firearms, may be a contributing factor to that. That number continues to go up. So there was a 54-percent increase from 1992 to 2003 in the reduction—54 percent down—of accidental, unintentional firearms deaths. From 2001 to 2003, that figure was a 13-percent decline. Those are very important statistics.

Once again, in no way should my statement on the floor be taken as someone who doesn't care or recognize that one child's death is one too many. We will not talk about safety belts and about safety seats and about any of the other kinds of deaths of children in that 5-year-old and under age group. Those are so dramatically higher than firearms that one could argue something ought to be done about those. Clearly, some things are being done about those. If you have a child in a safety seat or not in a safety seat and it is a State law and you have a law enforcement officer out there, you can, in many instances, note that and cause the adult to be more responsible than you can in the privacy of a home, where most of our firearms are today.

My point in arguing or discussing this issue is not to suggest we ought not to be concerned, but to clearly recognize that we will not, by this, in any way create a perfect world. Safe storage devices are no substitute for common sense and a clear understanding that a firearm misuse can become, as we all know, a lethal device. A firearm irresponsibly used can become a lethal device. While I know this is a popular thing to do, the point is—and I hope it is made clear by what I have said—the world better understands today than ever before, and unintentional deaths, accidental deaths by firearms have dramatically dropped in this country, and they are continuing to drop.

Nothing replaces the responsible action of an adult in his or her exercising of their constitutional rights to provide safe storage away from that casual curiosity of a small child about the uniqueness of a mom or dad's firearm, owned and held in the homes of America.

So I am certainly going to suggest to my colleagues that they vote their will on this, but it is important we shape it in the right context. I have always appreciated working with Senator KOHL and his sincerity on these kinds of issues. I think what he suggests today, as it relates to fines, or revocation of license, or failing to sell, is an appropriate fashion to go. But again, it is a mandate that I think today's reality in the marketplace would suggest is in part an unnecessary thing to do.

I yield the floor and retain the remainder of our time.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. CRAIG. I ask that the time be charged equally on both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. I rise to talk about this bill. There has been a lot of debate on the floor, and some have suggested this is a special interest group piece of legislation. I am here to say that I think it is very important this Senate do everything it can to stop frivolous lawsuits against gun manufacturers. Class action lawsuit reform, which we enacted earlier this year, also was an effort to curb the overly litigious society America now lives in.

We have found in so many instances that it is the litigiousness of America's society that drives jobs overseas and out of our country because we have lawsuit abuse of mammoth proportions. One of the areas in which there is lawsuit abuse is suing a gun manufacturer for the misuse of a gun. That is like suing the maker of a plate because someone throws a plate at another person. That is not what plates are for. And most certainly, the misuse of a gun is not caused by the manufacturer of a gun; it is caused by the person who is misusing the gun. So the Senate is taking steps in every area we can to curb this abuse of our legal system.

Today, we are addressing one portion of that in trying to stop gun manufacturers from being sued erroneously. There are many areas in which you can

sue a gun manufacturer. If the gun malfunctioned, then that kind of lawsuit, of course, would be allowed. They would also be allowed where there is a knowing violation of a firearms law, when the violation is the proximate cause of the harm for which the relief is sought. Negligent entrustment, defective product, or breach of contract or warranty are certainly areas where litigation is warranted. But when we have lawsuits filed by cities against plaintiffs such as Colt or Beretta, and the cities are filing a lawsuit against the gun manufacturer to stop the manufacture of guns, that is wrong.

The second amendment is one of the most treasured of our amendments to the Constitution, and that is the right to keep and bear arms, the right to protect yourself and your family in your home. That is something I have a bill to address right here in the District of Columbia, to make sure no person is deprived of their right under the Constitution to protect themselves in their homes by owning a firearm. You know, America is one of the few countries that doesn't have Government manufacture of guns. We don't. We have private manufacturers of guns and, therefore, we have the private use and private lawsuits that sometimes are filed just because a gun is used in a crime.

Well, it is not the fault of the gun manufacturer a crime is being committed. We need to put the fault for a crime on the person committing the crime. So I am speaking for this bill. I think Senator CRAIG has laid out very well the issues of the gun laws. I certainly want every gun to be sold with a lock, and most guns in America are. And if they are not, having that device added to the gun, I think, is fine.

I want everyone to have safety protection for guns in homes, because nothing could be worse than a child going into a gun cabinet and getting a gun that is not understood by the child and is fired. That is why we have safety locks. Most gun owners are responsible gun owners, and they should have a safety lock on a gun, particularly if there are children in the home.

I want to add my support for the bill and the ability for our private gun manufacturers to face lawsuits that are legitimate, but not to have a frivolous lawsuit that is filed against a gun manufacturer through no fault of the manufacturer for the misuse of the gun—not a malfunction, but a misuse.

I applaud the efforts of Senator CRAIG, and I hope we can take one more step toward curbing the lawsuit abuse that has been happening in this country in many areas. Frivolous lawsuits have been filed against gun manufacturers not for the malfunction of a gun, but the misuse. That is not the fault of the manufacturer, just as it is not the fault of other manufacturers of products that are misused.

Mr. President, I hope my colleagues will support this important legislation. Let me say, in closing, I have heard a lot of debate about stopping the Defense bill to go to this bill.

We had a cloture vote on Defense. Many people voted against cloture, and therefore the bill was brought down. I hope we can address the Defense authorization bill. I voted for cloture so we could go forward—not to stop the debate, but to curb it and keep it to relevant amendments so we may get this very important legislation through. With the cooperation of the other side, we will be able to do that the very first week we return. But I do think relevant amendments, not 100 amendments, including issues that do not even pertain to our defense, are legitimately cut off through a cloture vote.

If we can get cooperation from the other side, we certainly intend to pursue the Defense authorization bill. I wish we could have done it this week, and I voted for cloture so that we could. We did not win. There were over 40 people who voted against cloture. So now we are on another very important bill, and we intend to take up the energy conference report and the highway conference report, two major pieces of legislation that we will be able to send to the President this week.

I think we are going to have quite a successful week, a successful first part of this session of Congress to get important legislation on energy to create more incentives for different sources of energy for our country so we can become more self-sufficient.

Certainly the highway bill will be a jobs creator to put the highway people to work with the larger amount of money that is now available in the highway trust fund. Mass transit is going to get its authorization as well in this highway bill.

So we have a lot to do. I hope we can continue to pass this gun manufacturers liability bill—it is a good bill—and go forward with the other important business of our country. The first week we get back, I hope we will be able to address the elimination of inheritance taxes, death taxes, and I hope very much that we can get the Defense authorization bill and the Defense appropriations bill out by the first of the fiscal year so there will not be one day's delay in the money that is needed by our Department of Defense for the needs of the men and women who are fighting for the continued freedom of our country by fighting terrorism overseas.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Idaho.

Mr. CRAIG. Mr. President, the other side has asked if we would consider yielding back time. I will certainly work with the floor leader. We are checking to see if there is anyone else on our side who would want to come for the purpose of debating the Kohl amendment. If there is not, we will yield back time and accommodate as much as we can.

While we work out our time here, 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. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CRAIG. Mr. President, I ask unanimous consent that, while we are working out the time situation to see if anyone else wants to debate, the time under the quorum call be charged equally to both sides.

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

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

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

Mr. CRAIG. Mr. President, it is my understanding that we are ready to vote on the Kohl amendment. So I ask unanimous consent that all time be yielded back on both sides.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 1626. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 70, nays 30, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—70

Akaka	Frist	Murray
Baucus	Graham	Nelson (FL)
Bayh	Grassley	Nelson (NE)
Biden	Gregg	Obama
Bingaman	Hagel	Pryor
Boxer	Harkin	Reed
Brownback	Hutchison	Reid
Byrd	Inouye	Roberts
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Salazar
Chafee	Kennedy	Santorum
Clinton	Kerry	Sarbanes
Coleman	Kohl	Schumer
Collins	Landrieu	Smith
Conrad	Lautenberg	Snowe
Corzine	Leahy	Specter
Dayton	Levin	Stabenow
DeWine	Lieberman	Stevens
Dodd	Lincoln	Sununu
Domenici	Lugar	Voinovich
Dorgan	McCain	Warner
Durbin	McConnell	Wyden
Feingold	Mikulski	
Feinstein	Murkowski	

NAYS—30

Alexander	Chambliss	Ensign
Allard	Coburn	Enzi
Allen	Cochran	Hatch
Bennett	Cornyn	Inhofe
Bond	Craig	Isakson
Bunning	Crapo	Kyl
Burns	DeMint	Lott
Burr	Dole	Martinez

Sessions	Talent	Thune
Shelby	Thomas	Vitter

The amendment (No. 1626) was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

MODIFICATIONS TO AMENDMENTS NOS. 1605 AND 1606

Mr. FRIST. Mr. President, I understand there is a technical drafting error in the Craig amendment No. 1605, and I would therefore ask unanimous consent that amendments 1605 and 1606 be modified with the changes at the desk. I would note that these are technical changes only.

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

The modifications are as follows:

AMENDMENT NO. 1605

On page 10, line 16, at the end, add the following:

''; or (iv) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18''

AMENDMENT NO. 1606

At the end of the Amendment, add the following:

''or chapter 53 of Title 26, United States Code.''.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, for those who are interested and watching, at this moment we are attempting to look at all the amendments that have been offered, and we are close to proceeding on another meeting. We are requesting unanimous consent now which will allow Members to debate that between 2 and 3, with votes, and then we will attempt in all sincerity to move forward on the process that takes us through to a cloture vote at some time late afternoon, evening, or early tomorrow morning on this important issue. There is progress being made as we move through this process.

With that, until the unanimous consent is ready, 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. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I think the floor leader has seen the UC, has he not?

Mr. President, I ask unanimous consent that at 2 o'clock today, the pending amendments be temporarily set aside and Senator LEVIN be recognized in order to offer amendment No. 1623; provided further that there then be 1 hour for debate equally divided in the usual form, with no amendments in order to the amendment prior to the vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I thank Senator REED.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, under a previously proffered unanimous consent agreement, we will spend 1 hour, from 2 p.m. to 3 p.m., on the Levin amendment, with the time equally divided. We anticipate a vote at or around 3 o'clock.

I see the Senator from Michigan is now on the floor and ready to offer his amendment.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Michigan.

AMENDMENT NO. 1623

Mr. LEVIN. Mr. President, I call up amendment No. 1623.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 1623.

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

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

The amendment is as follows:

(Purpose: To clarify the prohibition on certain civil liability actions)

On page 13, after line 4, add the following:

SEC. 5. GROSS NEGLIGENCE OR RECKLESS CONDUCT.

(a) IN GENERAL.—Nothing in this Act shall be construed to prohibit a civil liability action from being brought or continued against a person if the gross negligence or reckless conduct of that person was a proximate cause of death or injury.

(b) DEFINITIONS.—As used in this section—

(1) the term ''gross negligence'' has the meaning given that term under subsection (b)(7) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(7)); and

(2) the term ''reckless'' has the meaning given that term under section 2A1.4 of the Federal Sentencing Guidelines Manual.

Mr. LEVIN. Mr. President, although I am tempted to allow the reading to take place, it is a short amendment, and I am going to read the heart of it myself:

Nothing in this Act shall be construed to prohibit a civil liability action from being brought or continued against a person if the gross negligence or reckless conduct of that person was a proximate cause of death or injury.

The bill itself provides in section 2, page 3, that the purpose of this bill—one of them—is that ''the possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system. . . .''

And I agree with that.

On page 5 of the bill where it states its purpose:

Purpose.—

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products . . . for the harm solely caused by the criminal or unlawful misuse of firearm products by others. . . .

And I agree with that. Nobody should be held responsible or accountable for harm which is perpetrated by others.

What about their own reckless or negligent conduct? When we look at the language of this bill, it is not just that manufacturers and dealers are not held accountable for the misconduct of others, except for three or four very narrowly described categories, they are off the hook for their own misconduct, their own reckless conduct, their own negligent misconduct. And that is what my amendment seeks to correct or clarify.

The stated purpose of this bill is that if negligence or recklessness is caused by others, if the misconduct of a third party is the cause of damage, that the gun dealer or manufacturer should not be held accountable. We agree with that. But what if their own recklessness, their own gross negligence contributes to the damage or, to put it in legalistic terms, what happens if their own misconduct is a proximate cause of the damage, injury, or death to somebody else? Why should they be off the hook for their own misconduct?

I ask unanimous consent, by the way, that Senator DURBIN be added as a cosponsor to this amendment.

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

Mr. LEVIN. Mr. President, what the amendment says is this act does not prohibit a civil liability action from being brought or continued against a person if his own gross negligence or reckless conduct was a proximate cause of the death or injury.

We have heard about a number of cases that have been brought to the attention of this body. These are cases where manufacturers or dealers have been held liable for their own misconduct, their own negligence, their own recklessness where the allegation against a dealer or manufacturers had to do with their own behavior.

We heard about the tragic DC area sniper shootings case where there was a settlement that was obtained from a gun supplier, called Bull's Eye Shooter Supply, for their own negligence. Mr. President, 238 guns had gone missing from Bull's Eye's inventory. Fifty had been traced to criminal actions since 1997. If this bill had been enacted prior to the DC area sniper shootings, the victims would have been unable to even

have their case against that supplier heard in court. And there are many other cases. There are so many cases that this is why police officers, police chiefs, and police departments around the country oppose this bill as it is written.

We should protect innocent manufacturers and gun dealers, just the way we should protect any innocent party in this country. But we should not protect anybody—I don't care if it is a manufacturer of guns or a manufacturer of automobiles or a manufacturer of refrigerators or a dealer in those products or any other products—we should not protect their folks from their own reckless conduct, their own negligence. And this bill does that. It does not say that it does that. It says it is protecting folks from the conduct of others. But the bill's analysis clearly indicates, when you go beyond the stated purpose, that it is the manufacturers' and gun dealers' own negligence and recklessness which is immunized, with very narrow exceptions.

If they committed a violation of law, if they have committed a crime, you can go after them; they are still on the hook. If they negligently entrust, knowing that the person to whom they have entrusted a weapon is going to go out and commit a crime or do something unlawful, they are still on the hook. But if they just left their guns sloppily around the store, or if they hired employees who they knew or should have known were going to illegally sell guns, steal guns, and then have those guns used in a criminal endeavor—and these are real cases—if that is the type of negligence or recklessness that is at issue, then they are off the hook.

They are only kept on the hook, under the language of this bill, if they designed something negligently, if they have negligently entrusted in a very narrow definition, or if they have committed a crime.

I want to read excerpts from a letter which has been signed by, I believe, 75 law professors:

> Dear Senators and Representatives: S. 397 . . . described as ''a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others,'' would largely immunize those in the firearms industry from liability for negligence. This would represent a sharp break with traditional principles of tort liability. No other industry enjoys or has ever enjoyed such blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct. . . .
>
> American law has never embraced a rule freeing defendants from liability for the foreseeable consequences of their negligence merely because those consequences may include the criminal conduct of third parties.

Under American tort law, they say:

> . . . actors may be liable if their negligence enables or facilitates foreseeable third party criminal conduct.

These professors remind us:

> Thus, car dealers who negligently leave vehicles unattended, railroads who negligently manage trains, hotel operators who negligently fail to secure rooms, and contractors who negligently leave dangerous equipment unguarded are all potentially liable if their conduct—

Their conduct—

> creates an unreasonable and foreseeable risk of third party misconduct, including illegal behavior, leading to harm.

In this amendment, we make it clear that if the conduct of gun manufacturers and gun dealers is grossly negligent or reckless, and if that is a proximate cause of the death or injury of someone else, they are not off the hook, and they should not be. No one in this country should be. No one in this country is, as far as I know.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 20 minutes 40 seconds remaining.

Mr. LEVIN. I appreciate that. My cosponsor, Senator DAYTON, would like 5 minutes yielded to him. I yield 5 minutes to Senator DAYTON.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank my colleague, the senior Senator from Michigan, for whom I have so much respect. He is a leader and champion in so many important areas and has, once again, risen to this occasion. I am proud to be cosponsor of the Levin amendment.

Mr. President, this legislation eviscerates the liability for negligence for one industry in America, the gun industry. I strongly support the second amendment.

I have enjoyed the support of the NRA in the past, probably not in the future. Last year in this country, by the industry statistics, over 1.3 million handguns were sold and over 2 million long guns—legally, properly, in almost all cases constitutionally protected. Nothing in this country, nothing being considered here, nothing that would ever pass this body, in my lifetime, would prevent law-abiding citizens from lawfully buying and owning firearms. Nothing should and nothing will, not because of the existence of the NRA, not because they are holding forth and preventing the marauding hordes from somehow overriding and overturning this constitutional amendment—it is not going to be changed because the political support in this country would not be for it. The people would not support it. That right is constitutional and it is inviolable, but it is not inconsistent with that right to also require the responsible distribution and sale of those millions of firearms.

We all know what damage they can do to innocent people when they are misused by criminals or mistakenly used by children. We should do all we reasonably can to prevent those tragedies to innocent people and to innocent families. We should insist that everyone in the gun industry do all they can to prevent them as well. That is what the legal standard of negligence requires. It is what most people in this industry consistently practice.

I own two handguns. I own two shotguns. They are in Minnesota, purchased from Minnesota dealers who take their responsibilities very seriously. They are not our concern. They need not be concerned because their own practices are a clear defense against any unwarranted accusations.

However, there are a few in this country, as there are in any industry, that are not responsible manufacturers, distributors, or dealers. Senator LEVIN has cited evidence of the results of those irresponsible actions, and they should be our concern. They certainly do not warrant our protection. They certainly do not deserve to be elevated to a special status that is not accorded to responsible manufacturers and sellers of every other consumer product in America.

The Levin amendment, and I will read it again, says that if gross negligence or reckless conduct of that person was the proximate cause, a direct cause of death or injury to somebody else, this act shall not prohibit a civil liability action from being brought forth. How can anyone here be opposed to that? It defines those terms clearly in the amendment, which was one of the specious excuses used to oppose it last year. It defines its terms more clearly than does the underlying bill. So if this amendment fails, it truly gives lie to the claim that this bill intends to hold the gun industry to any standard of liability. If not for gross negligence that is a direct cause of death or injury to an innocent person, if not for that, there is no standard of liability at all.

The American Bar Association has taken a position in opposition to this legislation, and I would just note a couple of references. I ask unanimous consent that following my remarks, this be printed in the RECORD.

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

(See exhibit 1.)

Mr. DAYTON. It says that this proposed legislation would remove defendants from one of the oldest principles of civil liability law—that persons or companies who act negligently should be accountable to victims harmed by this failure of responsibility. It states that under product liability laws in most States, manufacturers must adopt feasible safety devices that would prevent injuries caused when their products are foreseeably misused, regardless of whether the uses are ''intended'' by the manufacturer or whether the product ''fails or improperly functions.''

Thus, as the Senator from Michigan noted, automobile makers have been held civilly liable for not making cars crashworthy even though the intended use is not to ''crash the cars.'' Manufacturers of cigarette lighters must make them childproof even though children are not intended to use them. Under this proposed legislation, however, State laws would be preempted so

that gun manufacturers would enjoy a special immunity.

The letter also points out that this is happening in the existing legal backdrop of the present unparalleled immunity that the firearms industry already enjoyed from any Federal safety regulation. Unlike all other consumer products except for tobacco, there is no Federal law or regulatory authority that sets minimum safety standards for domestically manufactured firearms because that industry was able to gain an exemption for firearms from the 1972 enacted Consumer Product Safety Act, the primary Federal law that protects consumers from products that present unreasonable risk of injury. Of all the products we should have included in that legislation, firearms are among them given the inherent danger from their misuse or from their improper manufacture. Instead, they are exempted from the consumer product safety oversight by the Federal Government. That is the power of the industry. I guess they have the power, they are demonstrating, to get this bill enacted as well and remove themselves from all liability. That is not in the best interest of America. It is not a fair standard for America. It is an injustice to other businesses, manufacturers and sellers of every other product in America.

If we are going to recognize, as we should, that excessive litigation is a problem for this industry and for most all others, we should deal with tort reform in its entirety as it applies fairly and equally to all businesses and all industries, not single out one for special treatment.

I yield the floor.

EXHIBIT 1

AMERICAN BAR ASSOCIATION,
GOVERNMENT AFFAIRS OFFICE,
April 4, 2005.

DEAR SENATOR: I am writing on behalf of the American Bar Association to express our strong opposition to S. 397, the Protection of Lawful Commerce in Arms Act, and to similar legislation to enact special tort laws for the firearms industry. The ABA opposes S. 397, and has opposed similar legislation in the past two Congresses, because we believe the proposed legislation is overbroad and would unwisely and unnecessarily intrude into an area of traditional state responsibility.

The responsibility for setting substantive legal standards for tort actions in each state's courts, including standards for negligence and product liability actions, has been the province of state legislatures and an integral function of state common law since our nation was founded. S. 397 would preempt state substantive law standards for most negligence and product liability actions for this one industry, abrogating state law in cases in which the defendant is a gun manufacturer, gun seller or gun trade association, and would insulate this new class of protected defendants from almost all ordinary civil liability actions. In our view, the legitimate concerns of some about the reach of a number of suits filed by cities and state governmental units several years ago have since been answered by the deliberative, competent action of state courts and within the traditions of state responsibility for administering tort law.

There is no evidence that federal legislation is needed or justified. There is no hearing record in Congress or other evidence to contradict the fact that the state courts are handling their responsibilities competently in this area of law. There is no data of any kind to support claims made by the industry that it is incurring extraordinary costs due to litigation, that it faces a significant number of suits, or that current state law is in any way inadequate. The Senate has not examined the underlying claims of the industry about state tort cases, choosing not to hold a single hearing on S. 397 or its predecessor bills in the two previous Congresses. Proponents of this legislation cannot, in fact, point to a single court decision, final judgment or award that has been paid out that supports their claims of a ''crisis''. All evidence points to the conclusion that state legislatures and state courts have been and are actively exercising their responsibilities in this area of law with little apparent difficulty. S. 397 proposes to exempt this one industry from state negligence law. The proposed federal negligence law standard will unfairly exempt firearms industry defendants from the oldest principle of civil liability law: that persons, or companies who act negligently should be accountable to victims harmed by this failure of responsibility. Negligence laws in all 50 dates traditionally impose civil liability when individuals or businesses fail to use reasonable care to minimize the foreseeable risk that others will be injured and injury results. But this proposed legislation would preempt the laws of the 50 states to create a special, higher standard for negligence actions for this one protected class, different than for any other industry, protecting them from liability for their own negligence in all but extremely narrow specified exceptions. The ABA believes that state law standards for negligence and its legal bedrock duty of reasonable care should remain the standard for gun industry accountability in state civil courts, as these state standards do for the rest of our nation's individuals, businesses and industries.

The proposed federal product liability standards will unfairly insulate firearm industry defendants from accountability in state courts for design defects in their products. The proposed new federal standard would preempt the product liability laws in all 50 states with a new, higher standard that would protect this industry even for failing to implement safety devices that would prevent common, foreseeable injuries, so long as any injury or death suffered by victims resulted when the gun was not ''used as intended''.

Under existing product liability laws in most states, manufacturers must adopt feasible safety devices that would prevent injuries caused when their products are foreseeably misused, regardless of whether the uses are ''intended'' by the manufacturer, or whether the product ''fails'' or ''improperly'' functions. Thus automakers have been held civilly liable for not making cars crashworthy, even though the ''intended use'' is not to crash the car. Manufacturers of cigarette lighters must make them childproof, even though children are not ''intended'' to use them. Under. this proposed legislation, however, state laws would be preempted so that gun manufacturers would enjoy a special immunity.

Enactment of S. 397 would also undermine responsible federal oversight of consumer safety. The broad and, we believe, unprecedented immunity from civil liability that would result from enactment of S. 397 must be viewed against the existing legal backdrop of the present, unparalleled immunity the firearms industry enjoys from any federal safety regulation. Unlike other consumer products, there is no federal law or regulatory authority that sets minimum safety standards for domestically manufactured firearms. This is because the firearms industry was able to gain an exemption for firearms from the 1972-enacted Consumer Product Safety Act, the primary federal law that protects consumers from products that present unreasonable risk of injury. Over the last 30 years, an average of200 children under the age of 14 and over a thousand adults each year have died in gun accidents which might have been prevented by existing but unused safety technologies. A 1991 Government Accounting Office report estimated that 31 percent of U.S. children's accidental firearm deaths could have been prevented by the addition of two simple existing devices to firearms: trigger locks and load-indicator devices. Sadly, these minimal safety features are still not required.

This bill, if enacted, would insulate the firearms industry from almost all civil actions, in addition to its existing protection from any consumer product safety regulations. Such special status for this single industry raises serious concerns about its constitutionality; victims of gun violence have the right—as do persons injured through negligence of any party—to the equal protection of the law.

The risk that states may at some future date fail to appropriately resolve their tort responsibilities in an area of law—where there is no evidence of any failure to date—cannot justify the unprecedented federal preemption of state responsibilities proposed in this legislation. The ABA believes that the states will continue to sort out these issues capably without a federal rewriting of state substantive tort law standards. The wiser course for Congress, we believe, is to respect the ability of states to continue to administer their historic responsibility to define the negligence and product liability standards to be used in their state courts. For these reasons, we urge you to reject S. 397.

Sincerely,

ROBERT D. EVANS.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I yield 10 minutes of the opposition time to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I rise in opposition to the amendment that has been proposed by the Senator from Michigan and cosponsored by the Senator from Minnesota. While this amendment appears to be innocuous, it would actually gut the very underlying purpose of this legislation. Let me explain briefly.

First, the purpose of this bill is to prohibit frivolous lawsuits from being brought against manufacturers or sellers of firearms, lawful products, but which result from the criminal or unlawful use of a firearm.

Now, the Senate has many people who have had a lot of experience in the legal profession, and any of us who have had any experience with civil litigation, particularly tort litigation, know that the scope of the discovery, the scope of the litigation is determined by what is pled actually by the person who brings the lawsuit, or the plaintiff.

In my experience, and I am confident that it is generally true, in virtually

every civil lawsuit where damages are sought, not only is there a pleading of ordinary negligence—or perhaps strict liability if it is a product or manufacturer—but in addition there is an allegation of gross negligence, which is what this amendment would except from the general prohibition against lawsuits against manufacturers of these lawful products for harm resulting from criminal or unlawful use of a firearm.

It is clear to me that the litigation expense, the harassment of a lawful manufacturer of this product, would not be avoided. In fact, one of the very purposes of this legislation would be undermined if this amendment were agreed to. So I urge my colleagues to oppose it, as I do.

The fact is, in America today, we are less competitive globally because of a variety of reasons, but it can be summarized this way: our tax policy, our regulatory policy, our lawsuit culture, the cost of health care, just to name four items. But the fact is, because of our litigation culture today in this country, we are less competitive with other countries around the world, and we are seeing the exodus of jobs in America because, simply stated, manufacturers and producers of other lawful goods can do it cheaper and more efficiently elsewhere. That is a threat to our economy and our prosperity that we enjoy in this country.

This is actually true in the case of gun manufacturers. For example, one such manufacturer is located in the small town of Eagle Pass in my home State of Texas. A company by the name of Maverick Arms, Inc., assembles Maverick and Mossberg brand firearms there and is one of a group of companies that is in the fourth generation of family ownership that dates as far back as 1919. Maverick employs approximately 150 skilled workers in Eagle Pass, as well as supplying other work to other vendors.

Maverick and its parent company, Mossberg, cannot withstand the continued onslaught of frivolous litigation against this manufacturer for merely doing what lawful manufacturers do—making a legal product but in this instance one that is misused by a criminal. They know if they get caught up in the litigation, too often emotions run high, reason and rationality is suspended, and these manufacturers become not only sued but actually on occasion held responsible for the acts of criminals.

I certainly respect the distinguished Senator from Michigan, and I was just thinking, of course, his State is known in particular for manufacturing automobiles. It strikes me that automobiles can be used safely or unsafely, but certainly no one would claim that General Motors or any other manufacturer of an automobile should be held responsible if someone decides to take that automobile that is operating in completely good condition and decides to run over somebody and kill them or cause them physical harm.

For the same reason, firearms can be used both for lawful purposes and safely or they can be misused. For the same reason we would say General Motors or any car manufacturer would not be responsible for the criminal use of an automobile, so should manufacturers of firearms not be held responsible for the criminal acts or misuse of their lawful product.

We know in the end that what this is all about is trying to drive gun manufacturers out of business. Unfortunately, that means American jobs are being threatened. Eventually it means that the second amendment rights of law-abiding citizens are compromised.

I wish we would focus more of our efforts, as we have in the recent past, on criminals, the people who misuse firearms, the ones who cannot lawfully own or sell firearms, and leave those who are making a lawful product that can be and is used safely day in and day out out of the picture.

Indeed, the effect of this amendment, I submit to my colleagues, is to undermine the effect of the entire bill which would protect these lawful manufacturers from frivolous litigation when their product is misused by a criminal and causes harm to some person. So I urge my colleagues to reject it, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. I yield 5 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my colleagues, and I thank the managers for the courtesy they showed us in the course of managing this bill.

I rise, as I did in the previous consideration of this bill, to support my colleague from Michigan. I do so because I basically want to be counted among those who are trying to bring a measure of relief to those professional people, such as doctors and educators, a whole list of people I enumerated last night when I addressed this bill on the Senate floor, who need help. In my judgment, Senator LEVIN—both of us are lawyers—is reaching back to the very fundamentals of the common law. These standards which the Senator wishes to have in this bill are the same standards that have withstood the test of time in court litigation from the very beginning of the judicial process, indeed in England and in our country. It is for that reason that I support it.

I also draw the attention of my colleagues to my amendment, which is not pending, but as I understand, it is filed at the desk, amendment No. 1625. I rise at this time to speak to it because it really addresses, in a very narrow way, one of the ultimate goals of the Senator from Michigan.

My concern is that the gun dealers across America need some protection themselves in this legislation. Ninety-nine percent are honest, law-abiding citizens. Yet they are subjected to the problems of our society today; namely, people can come in and steal from them.

My amendment adds to the bill, which has a provision in it on page 8 of the exclusions, and it would simply say, in actions brought against a gun dealer, a dealer which has a record of misconduct, negligence, and other types of criteria should not be entitled to the exemptions provided by this piece of legislation. So I want to be supportive. It protects those dealers who are trying to act in a lawful way who may have an accident, for some reason, and it does clearly remove from the protection of this bill dealers such as the one the Senator cited in the sniper case which struck my State of Virginia and Maryland and the District and paralyzed our businesses. People were afraid to go out on the street at night to conduct their ordinary affairs of life because of the threats.

That was a stolen weapon from a gun dealer that, for one reason or another, allowed some 200 weapons to disappear from the shelves of that store or inventory over a period of a year or two. That dealer, in my judgment, would be protected as it now stands, unless the provisions comparable to perhaps those from the Senator from Michigan or in my amendment are brought to the attention of the Senate. At some time, I will arduously try to get my amendment in that status—I believe it is germane—that it can be considered by this body, as is the amendment of the Michigan Senator now being reviewed.

So I say to my distinguished manager, I hope that whatever procedure by which you hereby determine such amendments can be heard—others not—that mine, which I understand is germane, can be heard by the Senate at an appropriate time.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Idaho.

Mr. CRAIG. Mr. President, I yield 6 minutes to the Senator from Arizona.

Mr. KYL. I thank the Senator. I thank the Chair.

Let me get back to the Levin amendment which is our pending business. This amendment was tabled last year, and it should be again defeated or tabled. It is an amendment which would, in effect, be a poison pill for the entire bill because, in effect, what it says is if you allege gross negligence or recklessness, then the exemption the bill provides evaporates. So you are a lawyer. All you do is allege gross negligence or recklessness and, bingo, you are back in court again. So it totally undercuts the purpose of this legislation.

Secondly, last year the bill didn't contain a definition of gross negligence or recklessness. This year that was corrected, at least after a manner of speaking. But what definition do we have of gross negligence, for example? The bill provides that we turn to section B of the Bill Emerson Good Samaritan Food Donation Act. The definition of gross negligence under the Bill Emerson Good Samaritan Food

Donation Act is totally different from the case law definition of any State in the Union. It is totally different from the settled or standard concept of gross negligence in tort law.

Let me illustrate the difference. Under this bill, the term would mean: Voluntary and conscious conduct, including a failure to act by a person who at the time of the conduct knew that the conduct was likely to be harmful to the health or well being of another person.

That is not gross negligence. Black's Law Dictionary captures the essence of the definition. It defines gross negligence as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. And it consists of the conscious and voluntary act or omission which is likely to result in grave injury when in the face of clear and present danger of which the alleged tortfeasor is aware. And the standard, obviously in comparison to the Levin standard to be inserted into the statute this year, is quite different. Even if the judge were to look to the standard itself, he would find that that standard is significantly different than the usual concept of the term and does not rise, in any meaningful way, to what any of us who have practiced tort law would understand gross negligence to mean.

Third, this is a highly regulated industry by law, by Federal law and State law and even some local laws. And most of the acts that would meet the definition of gross negligence would already be in violation of law. And if they are in violation of law, they are not exempted from this legislation. We don't try to exempt any gun manufacturer for conduct which is in violation of law. So by definition that would be an exemption from the provisions of the bill, if it becomes law, and therefore would not need to be included.

The bottom line here is that if there really is a problem, that is to say, the conduct is so bad that it is a violation of law, no lawsuit is precluded under our bill in any way. And if it doesn't rise to that level, then it should not be considered to be within the concept of gross negligence under that term as it has always been applied in tort law. The definition that is to be substituted this year is clearly not a definition most of us would deem appropriate under these circumstances.

So in fact if the gross negligence or reckless conduct of a person was the proximate cause of death or injury—that is the allegation—you are in court irrespective of this bill, and clearly it totally undercuts the purpose of the bill.

So, Mr. President, I urge that our colleagues vote against the Levin amendment or table it, as was done last year, and recognize that this is designed to totally undercut the bill and, for that reason, would not be an appropriate amendment to be adopted.

The PRESIDING OFFICER. Who yields time? The Senator from Idaho.

Mr. CRAIG. How much time remains for the proponents?

The PRESIDING OFFICER. The Senator from Idaho has 18½ minutes, the Senator from Michigan has 8 minutes and 11 seconds.

Mr. CRAIG. The Senator from Idaho has how much time remaining?

The PRESIDING OFFICER. The Senator from Idaho has 18½ minutes.

Mr. CRAIG. I thank the Chair. I thank the Senator from Arizona for his statement.

I yield 10 minutes to the Senator from South Carolina.

Mr. GRAHAM. I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. The reason I am supporting this bill, from a 30,000-foot view of it rather than getting down into the weeds, is I think this is a defining ''cultural moment'' in the history of our country—when under what circumstances can someone get in your wallet, hold you responsible financially for an event, no matter how unfortunate it might be. Generally speaking, in the law of negligence, the first thing you have to establish in civil liability is a duty. You have to prove that the person being sued had a duty and violated that duty and the violation was the proximate cause and the damages flow from that event.

Here is what this bill does not do. It does not let a gun manufacturer off the hook from the duty of producing a reliable and safe gun. If you defectively produce a weapon, you can be held liable. It doesn't let a seller or a distributor off the hook for violating a statute or making a sale illegally because it says, if you violate the law that exists, then you have broken a duty. Duty can be established by relationships. It can be established by a statute. So this bill does not allow someone to sell a gun without following the procedures that we have set out to sell a gun. It doesn't allow someone to make a gun that is unsafe. You are on the hook, and you can be held accountable based on a simple negligence theory or a negligence per se theory, if you violate a specific statute during the sale of a gun or manufacturing of a gun.

But what this bill prevents, and I think rightfully so, is establishing a duty along this line: That you have a responsibility, even if you do a lawful transaction or make a safe gun, for an event that you can't control, which is the intentional misuse of a weapon in a criminal fashion by another person.

That is the heart of this bill. It doesn't relieve you of duties that the law imposes upon you to safely manufacture and to carefully sell. But we are not going to extend it to a concept where you are responsible, after you have done everything right, for what somebody else may do who bought your product and they did it wrong and it is their fault, not yours. So it does not matter whether you use a gross negligence standard, a simple negligence standard, you have blown by the concept of the bill in my opinion. The debate should be, is there a duty owed in this country for people who follow the law, manufacture safely, sell within the confines of the laws we have written at the State and Federal level to the public at large if an injury results from the criminal act of another? If that ever happens, this country has made a major change in the way we relate to each other and a major change in the law.

There are other efforts to make this happen. There is an effort, on the part of some, to hold food manufacturers liable if you choose to buy a lawful product and misuse it by eating too much of it, creating a duty on the part of the people who sell food to manage your own behavior, the behavior of another. Once you leave the store, if you follow this out, they should go home with you and make sure you are doing everything else right.

That to me is why this amendment from my good friend from Michigan should not be adopted and why we need to pass this bill. I am all for legal duties where there is a reason for them to exist. Safely manufacture a gun? You better believe it. If you put it in a stream of commerce and it hurts somebody and it is your fault, you will have a day in court.

If you sell a gun and you don't do it right and you have it in the wrong hands, then you will have your day in court.

The bill even has a negligent provision. If you negligently entrust a weapon to someone you know or should know should not have that gun, you will have your day in court. What we are not going to do, under a gross negligence or simple negligence standard, is create a duty on the part of sellers and manufacturers for an event that they can't control, which is the intentional misuse of a weapon to commit a crime or something akin to that, something that you can't control, nor should you be required to be responsible for the actions of others in that area of life. If we ever hold people who make products accountable for the misdeeds and the mistakes of others when there is no rational relationship or no rational ability to control it, then we have fundamentally changed America. This bill is very important, I say to Senator CRAIG. We have to pass this bill and stop this kind of legal reasoning because it is going to undermine our country.

With that, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 3 minutes. I wonder if Senator GRAHAM might wait. I want to comment on his remarks, and I don't want to do this without him being aware of it.

The good Senator said that if you have done everything right, you should not be held accountable. Of course. That is a given. I accept that. But what if you have been reckless, what if you have been grossly negligent and that gross negligence—by the way, I am perfectly happy to accept the Black's Law Dictionary definition if my good friend from Arizona wants to substitute that for the definition in this bill. That is not the issue. But if the gross negligence and recklessness is a proximate cause of injury, why should the manufacturer or dealer be immunized then?

What the Senator from South Carolina says is a truism; of course you should not be held accountable for the wrongdoing of other people. The question is whether you should be held accountable for your own recklessness, your own gross negligence. We should not immunize people against their own negligence. That is the issue. That is the only issue of this amendment. We don't see but what this bill does is eliminate rights, rights of people to get compensation against others who have been a cause of their death or injury. That is what the bill does, and that is what is wrong. There is no other industry, no other industry has that immunity. But this industry would be given that immunity for the first time that I know of in American history or tort history. You can perform, perpetrate an act of gross negligence or reckless conduct and not be held accountable. Now, if you commit a crime you will be held accountable, or if you negligently entrust, you will be held accountable, but all the other acts of negligence, which are perpetratable, are going to be immunized. It is not a matter, by the way, of alleging gross negligence or recklessness. It is a matter of proving recklessness or gross negligence, because the amendment says, not that the allegation is enough; it is that if you show gross negligence or recklessness caused your death or injury, you must have, still, a cause of action.

I am happy to yield at this time to my dear friend from Illinois.

I don't know how much time I have remaining.

The PRESIDING OFFICER. The Senator from Michigan has 5 minutes 15 seconds.

Mr. LEVIN. I am happy to yield 5 minutes. Does the Senator from Rhode Island want any time?

Mr. REED. No. Go ahead.

Mr. LEVIN. I yield 5 minutes.

Mr. DURBIN. I thank my colleague from Michigan.

Let me describe a tragedy, a tragedy which hits a little close to home for me. My grandson is 9 years old.

This is a tragedy involving a 10-year-old little boy in Philadelphia. On February 11 of last year, this little boy, Faheem, was on his way to school, walking from home to school. As he came into the schoolyard through the gates, a gang member came up and shot him in the face. He remained conscious for a short period of time, lapsed into a coma, and died 5 days later. That is a tragedy.

The reason I bring it up is because the amendment of Senator LEVIN, before us, addresses this tragedy. Where did the gun from come? It turns out it was in the hands of a gang member, one of these drug gang kids, crazed, trying to find money, shooting in every direction. He had the gun in his hand.

The obvious question to be asked is, Where did this drug gang member get his gun? We know where he got it. He got it through the American Gun and Lock Company of Girard Avenue, in Philadelphia, PA.

Did he buy it there? No. What happened was one of the gang members walked into this gun store with his girlfriend and he said, My girlfriend wants to buy some guns.

Why did he say his girlfriend? Because the gang member had a criminal record. He couldn't buy the guns. So the gun owner, the gun store owner, sees the girlfriend buying the guns for the gang member standing next to her, and decides he is going to charge a handling fee because she is a third-party purchaser.

They knew what was going on. The girl friends buy guns for the gangs to use on the street. So the store sold the gun, clearly understanding what was going on here, even charging a handling fee for it. It gets on the street in the hands of a gang member and a 10-year-old little boy walking into the schoolyard is shot in the face and killed.

So the question is this: Did the gun dealer do anything wrong? That is the question. I think it is a legitimate question. I think the gun dealer knew exactly what was going on here. The gun dealer wanted to make some money. The gun dealer was willing to look beyond the obvious criminal standing in front of him to the straw purchaser, this girlfriend, and let the girlfriend buy the gun and even charge a handling fee. What Senator LEVIN's amendment says is this is gross negligence. If you did not know this gun was going to be used in a crime, you were certainly negligent in allowing this to occur on your premises and we ought to be able to go to court. The family of this little boy who was murdered on the street should be able to go to court and say that gun dealer should be held responsible.

Do you know what? This bill before us will never allow that gun dealer to be held responsible for that misconduct. He sold the gun to the girlfriend of the gang member. The gun hits the street. The gun kills the little boy. And the courthouse doors will be closed to that family because of this bill unless we pass the amendment of Senator LEVIN.

That is what this is all about. If you think that is fair to let that gun dealer off the hook and to say to the family of that 10-year-old boy, ''We are sorry; you don't have the right to go to court and hold that gun dealer personally responsible,'' then you naturally would have to oppose the amendment of Senator LEVIN. But if you think this business, as every business in America, has a responsibility to do the right thing, there is a standard of care in the products they sell and the way they sell them, that this company, like every other company in America, should be held responsible for their own misconduct, then I suggest you should vote for the amendment of Senator LEVIN.

I retain the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Idaho.

Mr. CRAIG. Mr. President, might I inquire how much time remains on both sides?

The PRESIDING OFFICER. There remains 13 minutes 19 seconds for the Senator from Idaho, 36 seconds for the Senator from Michigan.

Mr. CRAIG. Mr. President, we have heard some of the most fascinating arguments in relation to the Levin amendment on both sides. I think it is clear if the Levin amendment were to become part of this legislation and this legislation were to become law, it would be relatively meaningless as to where we are in relation to the kind of junk or dilatory lawsuits that are currently being filed against gun manufacturers and gun dealers who not only produce a legal product to the market but sell it in the legal context.

It is important that we understand the arguments about gross negligence and reckless conduct. The idea that has been expressed by the Senator from Arizona, the Senator from Texas, and certainly the Senator from South Carolina, is that once you argue that, then obviously as an attorney the process must prove you are either right or wrong. In so arguing it, and in the effort of making proof, you have in large part destroyed the intent, of the legislation.

Mr. GRAHAM. Will the Senator yield?

Mr. CRAIG. I am more than happy to yield to the Senator from South Carolina.

Mr. GRAHAM. This has been a fascinating legal discussion. May I have a minute or two to answer?

Mr. CRAIG. I will allow the Senator to take as much time as he desires.

Mr. GRAHAM. I missed it. I think the fact pattern goes along the lines of a criminal goes in with a girlfriend or some other person and tries to purchase a weapon. What responsibility would someone have there?

If the dealer or the seller or the person in question had a reasonable opportunity to know a crime was afoot, or this was a sham deal, then I argue the bill would cover it under negligent entrustment. But here is what we would not want to do, in my opinion. You wouldn't want to hold the seller or the distributor liable if he had no reason to understand that a criminal conspiracy by two people he is not responsible for

was about to happen. Because that would be unfair. But if he had a reason to know, a reasonable opportunity to know, then that would be a totally different scenario.

That is a classic example of what we do not want to do. If a person, about to make a sale, should have known something was afoot to violate the law, they can be held responsible. But if you as a dealer are a victim of a criminal conspiracy you had no part or knowledge of, we are not going to make you responsible. That is the essence of this bill. Because to do so would undo legal concepts that stood 200 years, would put people out of business, and makes no sense.

I yield back to Senator CRAIG.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, over the last good number of years, law-abiding gun manufacturers in this country producing a legal product to the market, law-abiding gun dealers performing within the confines of the Federal firearms licensing process, have spent over $225 million defending themselves from the very arguments the Senator from Michigan would like to have continued.

The Senator from South Carolina has well spelled out that there is a duty and there is a responsibility. But if that duty is taken beyond your ability to know it, to understand it, to be able to act against it, then you ought not be responsible.

We have gotten ourselves into a very litigious society. So in a way it has cost our society more than almost any other society in the developed world today. Why? Because we would like to shove blame off onto someone else. When society wrongs society, it has to be somebody else's fault besides the one who perpetrated the wrong. So we have attempted to reach back through law, time and time again. As a result—we have heard it, whether it is the cost of an automobile or whether it is the cost of a firearm today or whether it is the cost of almost any consumer product—it is going to cost you more because somewhere the producers have to mount large amounts of money to pay their legal fees to fend off someone looking for an excuse to blame someone else for the action of someone who should have been responsible for themselves.

That is the essence or the underlying construction of what has brought us to the floor today. This argument will not be argued in behalf of gun manufacturers. Over the course of the next several years it will be argued in behalf of a lot of law-abiding, producing Americans who have simply grown tired and fed up with the idea that they always have to be sued although what they are doing is legal, even though they are within the law. That is because somehow somebody used what they have made illegally, and as a result they should have known and they are responsible because surely the person who perpetrated the crime cannot be held responsible because society either produced them or the environment in which they became irresponsible was a societal responsibility.

Oh, my goodness, where do we rest the blame? I think many of our parents suggested that we were responsible for our actions and we would have to pay the price. But the argument here is quite the opposite, that someone who might have a deep pocket somewhere down the road, because what they produced is a legal product for the market which was then used in a criminal act, should pay that price. And the criminal—not suggesting they would go free, but certainly suggesting they can't afford to pay, so someone else ought to pay, and the argument goes on and on.

You have heard my arguments over the course of the last 48 hours. We are the only nation who doesn't have a government-owned weapons factory. It has always been a product of the private market. If we choose to run them out of our country, then all of the firearms our men and women in the military use, our law enforcement community uses, our law-abiding citizens own, will be made in some other country.

I do not believe that is where our country wants to go, and it is clear that is not where a majority of the Senate wants to go. I do believe the Senate, as reflected by its vote on the cloture motion to proceed and ultimately get us to this bill, is reflective of society as a whole.

I hope a majority of the Senate will oppose the Levin amendment. I do not believe you can suggest you are going to correct a problem in one instance and then open another door and allow a death by a thousand cuts, as obviously would occur here, if that case were the one we are arguing.

Mr. President, may I inquire as to the time remaining?

The PRESIDING OFFICER. There remains 5 minutes 42 seconds.

Mr. CRAIG. Mr. President, I yield the next 5 minutes to the Senator from Utah.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Utah.

Mr. HATCH. I thank my colleague. He has made very strong arguments here. Nobody who is thinking should vote for this amendment.

I rise today to speak against this amendment No. 1623, an amendment which, in my view, would have the effect of gutting this gun liability bill. This amendment, if passed, could actually expand the number of lawsuits against gun makers and sellers dramatically. This is because the definition of gross negligence referenced in the amendment eliminates the requirement that a duty of care exists in order to be negligent in one's actions toward another.

As any of us who has been to law school knows, a duty toward another is the first element of any tort. But this amendment wipes out this element from the definition of gross negligence. In other words, this amendment would allow anti-gun lawyers to easily claim that gun makers and sellers know their products are ''likely to be harmful,'' without having to prove any duty or clear connection to the injured party.

This turns common law tort principles on its head. This is nothing more than a calculated effort by opponents of this legislation to expand the reach of this doctrine to get at conduct that had not previously been covered.

Furthermore, this amendment is simply not needed. Virtually any act that would meet the definition of gross negligence referenced in this amendment would already be a violation of Federal, State or local law, and therefore would not receive the protection of this law anyway.

This amendment is an attempt to undermine this legislation. We defeated this amendment soundly last year—soundly. I urge my colleagues to vote to defeat it again.

I thank my distinguished colleague and friend from Idaho who has led this fight courageously and in every way with the highest of standards. Frankly, this is one that should not see the light of day. I hope our colleagues will vote against it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I am prepared to yield back the balance of our time if the Senator from Michigan is.

Mr. LEVIN. I believe I have half a minute remaining, and I would like to use it.

The PRESIDING OFFICER. The Senator has 36 seconds.

Mr. LEVIN. Mr. President, we have been told people should not be held accountable for the wrongdoing of others; that is true. The question is whether they should be held accountable for their own wrongdoing.

This amendment would make sure that gun dealers and manufacturers—such as any other dealer or manufacturer—could be held accountable for their own wrongdoing. That is the issue. It is very clear in the wording of the amendment.

I ask unanimous consent the letter from 75 law professors describing what this bill would do in terms of eliminating responsibility for manufacturers' and gun dealers' own conduct be printed in the RECORD.

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

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL,
Ann Arbor, MI.

DEAR SENATORS AND REPRESENTATIVES: As a professor of law at the University of Michigan Law School, I write to alert you to the legal implications of S. 397 and H.R. 800, the ''Protection of Lawful Commerce in Arms Act.'' My colleagues, who join me in signing this letter, are professors at law schools around the country. This bill would represent a substantial and radical departure from traditional principles of American tort law. Though described as an effort to limit the unwarranted expansion of tort liability, the bill would in fact represent a dramatic

narrowing of traditional tort principles by providing one industry with a literally unprecedented immunity from liability for the foreseeable consequences of negligent conduct.

S. 397 and H.R. 800, described as ''a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others,'' would largely immunize those in the firearms industry from liability for negligence. This would represent a sharp break with traditional principles of tort liability. No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct.

It might be suggested that the bill would merely preclude what traditional tort law ought to be understood to preclude in any event—lawsuits for damages resulting from third party misconduct, and in particular from the criminal misuse of firearms. This argument, however, rests on a fundamental misunderstanding of American tort law. American law has never embraced a rule freeing defendants from liability for the foreseeable consequences of their negligence merely because those consequences may include the criminal conduct of third parties. Numerous cases from every American jurisdiction could be cited here, but let the Restatement (Second) of Torts suffice:

§ 449. TORTIOUS OR CRIMINAL ACTS THE PROBABILITY OF WHICH MAKES ACTOR'S CONDUCT NEGLIGENT

If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby. (emphasis supplied)

Similarly, actors may be liable if their negligence enables or facilitates foreseeable third party criminal conduct.

Thus, car dealers who negligently leave vehicles unattended, railroads who negligently manage trains, hotel operators who negligently fail to secure rooms, and contractors who negligently leave dangerous equipment unguarded are all potentially liable if their conduct creates an unreasonable and foreseeable risk of third party misconduct, including illegal behavior, leading to harm, In keeping with these principles, cases have found that sellers of firearms and other products (whether manufacturers, distributors or dealers) may be liable for negligently supplying customers or downstream sellers whose negligence, in turn, results in injuries caused by third party criminal or negligent conduct. In other words, if the very reason one's conduct is negligent is because it creates a foreseeable risk of illegal third party conduct, that illegal conduct does not sever the causal connection between the negligence and the consequent harm. Of course, defendants are not automatically liable for illegal third party conduct, but are liable only if—given the foreseeable risk and the available precautions—they were unreasonable (negligent) in failing to guard against the danger. In most cases, moreover, the third party wrongdoer will also be liable. But, again, the bottom line is that under traditional tort principles a failure to take reasonable precautions against foreseeable dangerous illegal conduct by others is treated no differently from a failure to guard against any other risk.

S. 397 and H.R. 800 would abrogate this firmly established principle of tort law. Under this bill, the firearms industry would be the one and only business in which actors would be free utterly to disregard the risk, no matter how high or foreseeable, that their conduct might be creating or exacerbating a potentially preventable risk of third party misconduct. Gun and ammunition makers, distributors, importers, and sellers would, unlike any other business or individual, be free to take no precautions against even the most foreseeable and easily preventable harms resulting from the illegal actions of third parties. And they could engage in this negligent conduct persistently, even with the specific intent of profiting from sales of guns that are foreseeably headed to criminal hands. Under this bill, a firearms dealer, distributor, or manufacturer could park an unguarded open pickup truck full of loaded assault rifles on a city street corner, leave it there for a week, and yet be free from any negligence liability if and when the guns were stolen and used to do harm. A firearms dealer, in most states, could sell 100 guns to the same individual every day, even after the dealer is informed that these guns are being used in crime—even, say, by the same violent street gang.

It might appear from the face of the bill that S.397 and H.R. 800 would leave open the possibility of tort liability for truly egregious misconduct, by virtue of several exceptions set forth in Section 4(5)(i). Those exceptions, however, are in fact quite narrow, and would give those in the firearm industry little incentive to attend to the risks of foreseeable third party misconduct.

One exception, for example would purport to permit certain actions for ''negligent entrustment.'' The bill goes on, however, to define ''negligent entrustment'' extremely narrowly. The exception applies only to sellers, for example, and would not apply to distributors or manufacturers, no matter how egregious their conduct. Even as to sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is one whom the seller knows or ought to know will use it to cause harm. The ''negligent entrustment'' exception would, therefore, not permit any action based on reckless distribution practices, negligent sales to gun traffickers who supply criminals (as in the above example), careless handling of firearms, lack of security, or any of a myriad potentially negligent acts.

Another exception would leave open the possibility of liability for certain statutory violations, variously defined, including those described under the heading of negligence per se. Statutory violations, however, represent just a narrow special case of negligence liability. No jurisdiction attempts to legislate standards of care as to every detail of life, even in a regulated industry; and there is no need. Why is there no need? Because general principles of tort law make clear that the mere absence of a specific statutory prohibition is not carte blanche for unreasonable or dangerous behavior. S. 397 and H.R. 800 would turn this traditional framework on its head; and free those in the firearms industry to behave as carelessly as they would like, so long as the conduct has not been specifically prohibited. If there is no statute against leaving an open truckload of assault rifles on a street corner, or against selling 100s of guns to the same individual, under this bill there could be no tort liability. Again, this represents radical departure from traditional tort principles.

My aim here is simply to provide information, and insure that you are not inadvertently misled about the meaning and scope of S. 397 and H.R. 800. As currently drafted, this Bill would not simply protect against the expansion of tort liability, as has been suggested, but would in fact dramatically limit the application of longstanding and otherwise universally applicable tort principles. It provides to firearms makers and distributors a literally unprecedented form of tort immunity not enjoyed or even dreamed of by any other industry.

Sincerely,

SHERMAN J. CLARK.

Professor Sherman J. Clark, University of Michigan Law School; Professor Richard L. Abel, UCLA Law School; Professor Barbara Bader Aldave, University of Oregon School of Law; Professor Mark F. Anderson, Temple University Beasley School of Law; Professor Emeritus James Francis Bailey, III Indiana University School of Law; Professor Elizabeth Bartholet, Harvard Law School; Professor Peter A Bell, Syracuse University College of Law; Professor Margaret Berger, Brooklyn Law School; Professor M. Gregg Bloche, Georgetown University Law Center; Professor Michael C. Blumm, Lewis and Clark Law School; Professor Carl T. Bogus, Roger Williams University School of Law; Professor Cynthia Grant Bowman, Northwestern University School of Law; Director of the MacArthur Justice Center and Lecturer in Law, Locke Bowman, University of Chicago Law School; Professor Scott Burris, Temple University Beasley School of Law; Professor Donna Byrne, William Mitchell College of Law; Professor Emily Calhoun, University of Colorado School of Law; Professor Erwin Chemerinsky, Duke Law School; Associate Clinical Professor Kenneth D. Chestek, Indiana University School of Law; Associate Professor Stephen Clark, Albany Law School; Professor Marsha N. Cohen, University of California Hastings College of the Law; Professor Anthony D'Amato, Northwestern University School of Law; Professor John L. Diamond, University of California Hastings College of Law; Professor David R. Dow, University of Houston Law Center; Professor Jean M. Eggen, Widener University School of Law; Associate Professor Christine Haight Farley, American University, Washington College of Law; Associate Professor Ann E. Freedman, Rutgers Law School—Camden.

Professor Gerald Frug, Harvard Law School; Professor Barry R. Furrow, Widener University School of Law; Associate Clinical Professor Craig Futterman, University of Chicago Law School; Professor David Gelfand, Tulane University Law School; Professor Phyllis Goldfarb, Boston College Law School; Professor Lawrence Gostin, Georgetown University Law Center; Professor Michael Gottesman, Georgetown University Law Center; Professor Stephen E. Gottlieb, Albany Law School; Professor Phoebe Haddon, Temple University Beasley School of Law; Professor Jon D. Hanson, Harvard Law School; Professor Douglas R. Heidenreich, William Mitchell College of Law; Professor Kathy Hessler, Case Western Reserve University School of Law; Professor Eric S. Janus, William Mitchell College of Law; Professor Sheri Lynn Johnson, Cornell Law School; Professor David J. Jung, University of California Hastings College of Law; Associate Professor Ken Katkin, Salmon P. Chase College of Law, Northern Kentucky University; Professor David Kairys, Temple University Beasley School of Law; Professor Kit Kinports, University of Illinois School of Law; Professor Martin A. Kotler, Widener University School of Law; Professor Baily Kuklin, Brooklyn Law School; Professor Arthur B. LaFrance, Lewis and Clark Law School; Professor Sylvia A. Law, NYU School of Law; Professor Ronald Lasing, Lewis and Clark Law School; Professor Robert Justin Lipkin, Widener University School of Law; Professor Hugh C. Macgill, University of Connecticut School of Law.

Professor Mari J. Matsuda, Georgetown University Law Center; Associate Professor Finbarr McCarthy, University Beasley

School of Law; Director (Retired Professor) Christine M. McDermott, Randolph County Family Crisis Center, North Carolina; Professor Joan S. Meier, George Washington University Law School; Professor Naomi Mezey, Georgetown University Law Center; Professor Eben Moglen, Columbia Law School; Professor Dawn C. Nunziato, George Washington University Law School; Professor Michael S. Perlin, New York Law School; Clinical Professor Mark A. Peterson, Northwestern School of Law, Lewis and Clark College; Professor Mark C. Rahdert, Temple University Beasley School of Law; Professor Denise Roy, William Mitchell College of Law; Professor Joyce Saltalamachia, New York Law School; Clinical Assistant Professor David A. Santacroce, University of Michigan School of Law; Professor Niels Schaumann, William Mitchell College of Law; Professor Margo Schlanger, Washington University School of Law; Professor Marjorie M. Shultz, University of California Boalt School of Law; Senior Lecturer Stephen E. Smith, Northwestern University School of Law; Professor Peter J. Smith, George Washington University Law School; Professor Norman Stein, University of Alabama School of Law; Professor Frank J. Vandall, Emory University School of Law; Professor Kelly Weisberg, University of California Hastings College of the Law; Professor Robin L. West, Georgetown University Law Center; Professor Christina B. Whitman, University of Michigan School of Law; Professor William M. Wiecek, Syracuse University College of Law; Professor Bruce Winick, University of Miami School of Law; Professor Stephen Wizner, Yale Law School; Professor William Woodward, Temple University Beasley School of Law.

Mr. CRAIG. I am prepared to yield back the remainder of my time.

I move to table the motion and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from New Mexico (Mr. DOMENICI).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 37, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—62

Alexander	Dole	Murkowski
Allard	Dorgan	Nelson (NE)
Allen	Ensign	Pryor
Baucus	Enzi	Reid
Bennett	Frist	Roberts
Bond	Graham	Rockefeller
Brownback	Grassley	Salazar
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Burr	Hatch	Shelby
Byrd	Hutchison	Smith
Chambliss	Inhofe	Snowe
Coburn	Isakson	Specter
Cochran	Johnson	Stevens
Coleman	Kyl	Sununu
Collins	Landrieu	Talent
Conrad	Lincoln	Thomas
Cornyn	Lott	Thune
Craig	Martinez	Vitter
Crapo	McCain	Voinovich
DeMint	McConnell	

NAYS—37

Akaka	Durbin	Lugar
Bayh	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Harkin	Nelson (FL)
Boxer	Inouye	Obama
Cantwell	Jeffords	Reed
Carper	Kennedy	Sarbanes
Chafee	Kerry	Schumer
Clinton	Kohl	Stabenow
Corzine	Lautenberg	Warner
Dayton	Leahy	Wyden
DeWine	Levin	
Dodd	Lieberman	

NOT VOTING—1

Domenici

The motion was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

Mr. SESSIONS. Mr. President, I believe the legislation before us today is a good tort reform bill. It deals with a discrete area of abuse in our legal system. We in this Congress have the responsibility to monitor our legal system. If it is not functioning well, we ought to deal with it. It is a practical act to protect manufacturers and sellers of a lawful item, and it has constitutional implications because the destruction of our firearms industry in America indeed would implicate and undermine the constitutional right Americans have of keeping and bearing arms. It is good for jobs.

We know American manufacturers are under siege from lawsuits, and we could end up losing an entire industry, which is a pretty big industry. It is good for our police and national defense; that is where they get their firearms. The Secretary of Defense wrote us a letter indicating—actually, the legal counsel wrote the letter to say they support it because they are concerned about the manufacturing capability of firearms used by our military. The same companies fighting these suits are also the companies that produce firearms for the military and our police forces.

It is good because it restores the historic principles of what liability should be in our country. Where and how should one be liable? What acts can justify someone coming and taking your property? What kind of acts of wrongdoing do you have to commit before that is possible? Also, we might ask ourselves, what industry might be next? If we erode the classical defenses and principles that protect legitimate businesses in this case, what business might be next? I was pleased to hear that we achieved a bipartisan consensus, it seems, with 61 cosponsors for the legislation. I had hoped we would move it through rather rapidly. I knew a good number of Senators cared deeply about it and did not approve of it, and they wanted to speak about it. But the truth of the matter is, this is taking quite a long time. We have had a filibuster even on a motion to proceed to the bill, which included 30 hours of post-cloture debate on that, and 66 Senators voted to have cloture and bring this bill up on the floor for debate. So we have good, strong, bipartisan support for moving forward with this legislation.

I know the majority leader is committed. We can complete it, even if we have to go into the weekend. Hopefully, that won't happen, but I am prepared to be here and I think most Senators are. After this amount of effort, let's complete this. We can see the end in sight. I urge that the discussions going on allow us to proceed more rapidly. I hope we will have good success on that.

I believe the opposition to this legislation spins out of a hostility to firearms by some. If you look at it, it is mostly in the big cities where they are not familiar with hunting, outdoors, and recreational shooting. The emotional fervor for radically limiting the historic American right to keep and bear arms arises out of a fear of crime and a desire to be safe and, I think, a misunderstanding of the nature and character of decent, law-abiding citizens in this country who possess firearms and use them to hunt and for recreational purposes on a regular basis. But I understand crime is a big part of the objection to firearms. It is out of that fear and concern that we have mayors and cities passing laws that create strict liability, such as the District of Columbia. In a recent case that ruled against the Beretta Company, Beretta wrote us that if this law remains in effect, they could become liable for every murder using a Beretta handgun that may occur in Washington, DC, even though they may have lawfully sold the gun through a dealer in Alabama, Minnesota, Maine, or California. But if it ended up here some way by some criminal and somebody got shot, they have the ability to hold the manufacturer or the dealer liable for that. They become an insurer against criminal activity by criminals.

It is not a sound principle of law. It cannot be defended on principle. That is what we are trying to curtail here—this utilization of the legal system, the court system, the lawsuit system, to effect a public policy end that has not been supported by the people and actually could threaten the ability to keep and bear arms and threaten an entire industry in our country. I understand what is bringing this up.

I want to share some important things. What is causing crime? We don't know for sure. We know some of the causes. What can we do to deal with it? How can we utilize gun laws to reduce crime and violence and make

our communities safer, do the right thing? Does passing more and more burdensome laws and regulations that fall on lawful gun owners help reduce crime? I submit to you it does not.

There are dramatic numbers that I think indicate the effectiveness of gun law prosecutions to reduce crime. When I came to the Senate in 1997, I had been a U.S. attorney and, as such, prosecuted criminals who utilized guns and violated Federal gun law. I know the Presiding Officer has done that, too; he has been a prosecutor. He dealt with these Federal gun laws. What we did was focus on the law that dealt with criminal behavior, and we were aggressive about it. I remember coming up with a name for our project. We called it Project Triggerlock in, I guess, the late 1980s. We had a newsletter and we talked with all our sheriffs and local police about the new, tough Federal gun laws that crack down on the utilization of a gun during a criminal act, and the 5-year mandatory penalty without parole if you carry a firearm during a drug offense, or if you possess a firearm after having been convicted of a felony, you would go to jail and it would be without parole.

I thought it was an effective thing and we worked hard to prosecute those cases. Then I was elected Alabama attorney general and then I came to the Senate. When I came here, there was one new gun law after another that attempted to restrict gun ownership and the ability to get guns. We were voting on them all the time. I began to say, what are we doing prosecutionwise with the laws we have? I began to inquire in the Judiciary Committee, of which I am a member. In 1997 when Attorney General Janet Reno or the division chief, or the head of the ATF came up, I began to ask questions.

If you can see this chart, you begin to see where my concerns came from. Going along in the 1990s, in 1992 and 1993, there were 3,700 and 3,800 gun prosecutions per year. They began to drop off 20 percent. By 1996, they had fallen 20 percent, and by 1997, 20 percent. We began to ask questions about that and push this issue with the Attorney General. I raised it every time she came before the committee with her staff people. I think maybe that or other things happened that began to show a trend change. We started moving up a little bit. By 2000, we were back up to 6,000 gun prosecutions.

President Bush campaigned on it. When John Ashcroft came up for his confirmation, I reminded him of the promise the President had made. I asked Attorney General Ashcroft: Will you make prosecution of gun crimes a high priority by the U.S. Department of Justice? He said: Yes, sir, I will. Now we have Attorney General Gonzales. Look at these numbers; they have doubled since 2000. We have 11,000 prosecutions per year now. Many of those carry significant time in jail. If a person carries a fully automatic weapon—a MAC–11 or a machine gun of some kind—during a drug trafficking offense, the penalty they suffer is 30 years in jail without parole. We saw that happen all over Miami. People were shooting. There were gang wars, with machine guns that were used to shoot people down.

These tough laws that were passed in the early 1980s cracked down. Now you don't see machine guns among drug dealers. In fact, because of these prosecutions you are seeing fewer and fewer drug dealers carrying guns and fewer other criminals carry guns because they know if they get caught, they will be sent to Federal jail without parole for a long time.

I want to talk about that. Somewhere along in 1998, 1999, or 2000, we had before the Judiciary Committee the testimony of a very impressive U.S. attorney from Richmond, appointed by the Clinton administration. He was an African American. He had developed what he called Project Exile. I called it ''Project Trigger Lock with Steroids.'' It was a better plan than I had developed. He believed if you utilize these laws aggressively, you could save lives. He saw people in his community dying in shootouts and criminal fights, he believed, unnecessarily. So he started this project.

He put up billboards that said: You use a gun, we will send you off for a long period of time. You will be exiled. You will go off to a Federal jail. You don't get to go to the county jail. You will go off to the Federal jail, 10 years without parole, 20 years without parole, depending on the offense. He had some dramatic results from that project.

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

Mr. SESSIONS. I will be pleased, I say to the Senator from Idaho.

Mr. CRAIG. Project Exile in Richmond, which the Senator referenced, in Richmond was a fascinating demonstration, as I think the Senator is pointing out. In the testimony of a person arrested for holding up a 7–Eleven—he went in with a baseball bat; this is true evidence—when he was being questioned as to why he used a bat instead of a gun in the commission of a crime, he said, Because if I use a gun in the commission of a crime, I do time in a Federal jail, just as the Senator has spoken to. So he chose the baseball bat as his weapon and not the firearm. That happened in Richmond under Project Exile.

Mr. SESSIONS. I could not agree more. The U.S. attorney in Philadelphia was aggressive on some of these cases, and they would make a big bust with State and local law enforcement and Federal officers. The criminals did not want to go to the Federal court. They were afraid they would go there and sort them out, and the ones who had the guns would be the ones sent to Federal court, and they would get tough time.

Here are some of the numbers that occurred on Project Exile. From 2000 to 2003, Federal gun crime prosecutions nationally increased 68 percent. There is this perception that Republican administrations, because they are dubious and concerned about encroaching controls on the right of lawful Americans to have guns, that they are somehow soft on gun crime, that they do not care about people being victimized by crime.

Nothing could be further from the truth, as these numbers will show. From 2000 to 2003, Federal gun prosecutions increased 68 percent. Between the year 2002 and fiscal year 2003, the number of Federal firearms prosecutions nationally increased nearly 24 percent. In Colorado, for example, under their Project Exile program, Federal firearm charges between 1999 and 2003 were brought against more than 600 defendants, and in 365 of those cases that were completed, prison sentences were handed down totaling 18,671 months or 1,600 years.

As these prosecutions have increased, the number of crimes where a gun is used has decreased. Surprise. Between 1999 and 2000 and between 2001 and 2002, the violent crime victimization rate plunged 21 percent. Approximately 130,000 fewer Americans were victims of gun crime in 2001 and 2002 than in 1999 and 2000.

Project Exile began as a coordinated approach to fighting gun violence in the Richmond metropolitan area. That is where it started. It began in 1997 by a group of Federal prosecutors. They did a communitywide effort. In 1997, there were 140 homicides in Richmond. Just one year after the project was initiated, the overall murder rate dropped 36 percent, the number of firearm homicides dropped 41 percent, and robberies dropped by one-third.

In 2000, 3 years after Project Exile was implemented in Richmond, there were only 72 homicides during the year 2000, close to a 50-percent reduction. In its first year, Project Exile achieved the following: 372 persons were indicted for Federal gun violations, 440 guns were seized, and 196 persons sentenced to an average of 55 months of imprisonment.

There are three essential elements: Federal prosecution; integrated and coordinated partnership among local, State, and Federal law agencies; outreach for community involvement; and increased public awareness where we make sure the people in the community know in advance that if they carry a gun around while they are carrying on their criminal activities, they are in big trouble.

One of the main reasons that Project Exile has been so successful is the campaign to educate citizens about the lengthy terms they would be facing. Billboards all over Richmond broadcast it: An illegal gun gets you 5 years in Federal prison. It resonated throughout the community. Police and criminals knew the stories of what was happening on the streets. The criminals would throw away guns when officers

approached. They would confess to almost anything, but they would not confess to having a gun, and they specifically referred to Project Exile. So we know it was having an impact.

There are a number of important laws that are bread-and-butter laws that allow proper focus on criminal use of firearms. What I want to say is real simple. I don't want to overstate all of this, but it is significant. The simple fact is, it is not how many laws we pass, it is not whether we pass some convoluted law about this, that, or the other in Federal laws. It is whether we are allowing the gun prosecutions to drop 20 percent or whether they have gone up from under 4,000 to almost 12,000, three times.

If we maintain aggressive, systematic prosecution of dangerous criminals who carry firearms and they are sent to jail for long periods of time, we will protect the public. That is what I am saying. These other things make life more difficult for lawful gun owners and implicate, sometimes improperly, the constitutional right to keep and bear arms. But the real power of reducing crime, making our streets safer, resides in effective prosecution of these cases.

I could not be more pleased to see some of the good numbers we are getting in terms of reducing crime.

Look what is happening in States. It further amplifies what I have said. The overall homicide rate in jurisdictions that have the most severe restrictions on firearms purchases and ownership—let's look at this. Let's look at the homicide rate on the States that have the toughest firearm purchase laws, States that make it the hardest to buy a firearm: California, Illinois, Maryland, New Jersey, New York, and Washington, DC. Their homicide rate is 23 percent higher than the rest of the country.

The Federal Gun Control Act of 1968 imposed unprecedented restrictions on gun manufacturers, dealers, and owners. However, in the 5 years after its enactment, the national homicide rate averaged 50 percent higher than in the 5 years before the bill was enacted. The national homicide rate was 75 percent higher 10 years after the enactment of the Federal Gun Control Act, and 81 percent higher after 15 years. So passing a law that is not effectively prosecuted—not aggressively, systematically prosecuted, to the extent the criminals know you mean business—does not mean anything. You end up with just restrictions, regulations, costs, and burdens on honest Americans.

I have offered legislation—I am having a hard time getting any cosponsors on the Democratic side, but I think the Federal crack cocaine laws tend to be too tough, and they tend to fall disproportionately on African Americans. I think we ought to fix it and do something about it. I have proposed and written legislation and offered it more than once to do just that.

I am not here as one who believes locking people up and throwing away the key is the answer to fighting crime, but it is a big part of fighting crime that people receive substantial punishment if they represent a danger to the community or if they commit a serious crime.

Look at the incarceration rates: From 1980 to 1994, the 10 States with the greatest increase in prison population averaged a decrease of 13 percent in violent crime, while the 10 States with the smallest increase in prison population averaged a 55-percent increase in violent crime.

They say lock everybody up. Everybody does not shoot someone. There is only a small number of people in this country who have the maliciousness, the violent nature, or the hostility or meanness to go around shooting somebody. The more of those you can identify, the more of those you lock up, you can reduce the violent crime rate. You can make our communities safer and protect innocent Americans from that kind of activity. It is just as plain as night and day.

If you put violent criminals behind bars and keep them there, good things can happen. In 1991, 162,000 criminals who were placed on probation committed 44,000 violent crimes during their probation. A fourth of them committed a violent crime while they were out on probation. Twenty-one percent of the persons involved in the felonious killing of law enforcement officers during the last decade were on probation or parole at the time they murdered a police officer.

Some say if you really like police officers, you will vote against this bill because somehow this bill has something to do with protecting police officers from being murdered. Police officers are not telling me if one of their brothers or sisters is killed by a criminal that they want to sue Smith & Wesson. They are saying they want the criminal convicted and prosecuted. They believe if more criminals were prosecuted aggressively and fewer were given parole and probation early, then more police officers would be alive and healthy today. This is what we need to do.

I want to share this story on this general subject. It came to my attention recently, in June of this year. Leura Canary, a fine U.S. attorney in Montgomery, AL, the Middle District of Alabama, presides over 23 counties in the southwestern part of the State as a Federal law officer, and she works with others. She was presented a national award for most improved gun violence program.

I saved this release and would like to share it with you because it is emblematic of what we can do to save lives, protect the innocent, and reduce crime in America.

She calls their program Alabama ICE. It emphasizes cooperation among Federal, State, and local law agencies. They developed in the region an effective task force, a task force to combat gun crimes. The task force developed a training program and a case preparation technique plan. It produced significant results. Look at this. Federal gun prosecutions in the middle district of Alabama tripled in fiscal year 2003 over fiscal year 2002. Three times as many were prosecuted. And the number of gun crime matters referred for prosecutions increased 257 percent in that same period. Between 2000 and 2003, the number of gun prosecutions in the middle district has increased 513 percent.

She obviously took Attorney General Ashcroft's injunctions and directions to heart, a fact mentioned by Attorney General Ashcroft in his keynote address.

According to local officials, these efforts—local officials, not the U.S. attorney—have had a measurable effect on violent crime. In calendar year 2003, there was a 42-percent reduction in criminal homicides in the city of Montgomery over the previous year, 2002, a 42-percent reduction in the number of people murdered in the city of Montgomery.

Montgomery Police Chief John Wilson, whom I have known for quite a number of years, and who has been a professional in his career, who was an early partner in this effort, Alabama ICE task force, said:

> Alabama ICE is the only new program we implemented during this time period which targets violent crime in our city. I believe that ICE is a major factor in these reductions in the number of violent offenses. Without this program, these criminals would still be in our community committing crimes.

And, I would add, murdering people.

Local Alabama ICE task force members also expressed their reactions to the program and the award. Chief Anthony Everage of the city of Troy, a midsized or smaller city, said this:

> I think this is an excellent example of what can be accomplished through a joint effort by the United States Attorney's Office of the Middle District and law enforcement. Ms. Canary presented this very effective program along with a plan of action to our agency and the implementation has and will continue to make Troy a safer place.

''When Alabama ICE was implemented in Dothan, it was as though someone threw a large rock into still waters. The ripple effect shuddered through the criminal culture almost overnight. The word is out, get caught committing a crime while holding a gun and you're done. Even Johnny Cochran can't get you off,'' said Dothan Police Chief John White.

Actually, Johnny Cochran supported this effort and warned that people who commit crimes with guns suffer serious Federal time, because he knew innocent people's lives are at stake.

District Attorney Randall Houston of the 19th Judicial Circuit of Autauga, Elmore, and Chilton Counties, stated:

> Working with Federal prosecutors has expanded our charging options and our ability to lock up the most dangerous criminals in our community. We received this award because of the effectiveness of our partnership in combating crime.

Sheriff Jay Jones of Lee County said:

This award represents the positive result of criminal justice agencies on Federal, State, and local levels working in concert to confront and effectively reduce the incidents of gun violence in our community.

Is that not what it is all about, reducing gun violence?

Actual, measurable reductions in violent gun crimes have occurred in all of the fine programs implemented throughout the United States, and of those the program in the Middle District, administered under the direction of U.S. Attorney Leura Canary, was chosen as one of the best. It puts an exclamation point on the statement of hard work that so many law enforcement agencies in central Alabama do each day to provide for the safety of the public.

Sheriff Jimmy Abbett of Tallapoosa County said:

Alabama ICE has been very beneficial to our department in the successful arrest and convictions of persons in our area. The U.S. attorney has provided a willingness to work with local agencies. . . . The program . . . has provided local law enforcement agencies another tool to take the habitual criminals off the street.

That is what it is all about. Violent crime rates have reached the lowest level in 30 years, almost to the level of 1950. The crime rate went up steadily beginning in the 1950s into the early 1960s to the mid-1970s. In 15 years the murder rate doubled in this country. President Reagan came in and we saw about a 20-percent reduction. Then that flattened out during the crack cocaine years and then in the 1990s we began to see this go down.

One of the reasons is the Project Exile program that began in 1997 and is now spreading all over the country, which focuses on the criminal use of firearms. Whereas I am proud to review any legislation anybody wants to offer, I would note this, that I am willing to bet—I do not have the numbers on it, but I am willing to bet that perhaps 90 percent of the cases prosecuted in Federal court under these Project Exile type programs, the main ones are prosecuting any criminal in America who carries a firearm or possesses a firearm after having been convicted of a felony. If one is a felon, they are no longer able to possess a firearm. If firearms are kept out of the hands of felons, we are going to have less murders.

The next one is very close and very significant. It is carrying a firearm during the commission of a crime. It can be a crime of violence, a drug crime, a burglary, or a robbery. If someone is carrying a gun during criminal activity, they have a mandatory 5 years, 60 months, without parole, if they are convicted, in addition to what time they get for the underlying crime. That information is getting out there. The word is out there. Fewer and fewer criminals are carrying guns because of that.

Then there is carrying a sawed-off shotgun, possessing a firearm where the serial number has been erased or erasing a serial number. Those are the kinds of activities that form the bread and butter of the criminal prosecutions I mentioned today. That is what will break the back of crime. That is what can hold out hope that if we effectively and professionally maintain the pressure on the criminal gun element through these prosecutions, we can reduce crime, make our communities safer, and save innocent lives.

I do not think suing gun manufacturers is the right approach. That is not the way we are going to deal with it. We have the right approach. It was proven by the U.S. attorney in Richmond. It is being replicated all over America today. The Attorney General is driving this as one of his highest priorities, and if we stay on it, we are going to continue to see the murder rate in this country go down. Who knows, the murder rate could actually reach the level of the 1950s. We are not far from that today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I will take a moment to talk about the bill.

Mr. SESSIONS. Mr. President, would the Senator yield for a question?

Mr. REED. I would be happy to yield for a question.

Mr. SESSIONS. I hope the Senator is not too disturbed with me. I noticed in the New York Times today they had my picture in there and they described it as that of Senator REED. It probably will cost him 50,000 votes in his home State. But it was not my fault and if the Senator sues anybody, sue the New York Times.

Mr. REED. Reclaiming my time, I say to my distinguished friend and dear friend from Alabama, I am not perturbed. I just fear for his safety, and I thank him.

Mr. President, we have heard over the course of the last few days numerous homilies about personal responsibility. The irony, of course, is this legislation says everyone is responsible except for gun manufacturers, gun dealers, and gun trade associations.

There has been a discussion about the law. If one breaks a law they should be punished, but such discussions fail to capture the fact that we have essentially two systems with our legal system. There is the system of laws, the statutes, the ordinances that are passed by legislative bodies such as this body, and then there is the civil law: the criminal law and the civil law.

The Senator from Alabama went on at length about how we can enforce criminal laws more effectively; we can do good things with respect to criminal law enforcement. But I think we are ignoring the sense that there is also this civil law, where people can go to court if they have been injured and seek redress.

What this legislation would do is prevent many Americans who have been injured from going to court and seeking redress, either some type of compensation or some type of equitable remedy.

It is important that we recognize this bill will deny a voice to many people, modest people, who have been injured and who seek redress.

I was trying to think of a somewhat mundane example about these different systems. Since so much of this legislation talks about, well, if a particular statute is violated, one will be liable, but there is this intersection of obligations both under the criminal law and statutes and under the general principles of civil law.

The example I think of is there are some jurisdictions that make it a violation of the law to operate a cell phone in one's hand while they drive, and if one had an accident in that circumstance and someone is injured, the person could be prosecuted for violating the law, but they also could be sued because they have an obligation and duty to pay full attention as they drive. In other jurisdictions without this law, one could not be criminally charged but, of course, they could be sued.

Here is what essentially this legislation does in lots of respects. It says we are disregarding those instances where one has a duty to someone under the civil law. We will let them proceed with their suit if there is a criminal violation or a statutory violation, a violation of regulations, but for the vast number of other responsibilities we owe to each other, that are defined for the civil law, one will not have the opportunity to go to court.

Essentially, what we have said is we all have these obligations and responsibilities, except this now special, privileged class of gun manufacturers, gun dealers, and gun associations.

There is the presumption that has been persistent throughout that the law of the United States in general does not recognize any type of obligation if there is a criminal intervention, if a criminal gets involved in proximity to the injury. As I mentioned before, the black letter law of this country that is established in the restatement of torts clearly says if there is a criminal intervention, one can still be held liable for negligence if they fail to perform their duty, even if in the chain of action of causation there is a criminal act. So this notion that we are charging these gun dealers and gun manufacturers with the crimes of another, a bad person or criminal, is without substance.

What Senator LEVIN said so eloquently and others said so eloquently talking about his amendment, is this is about the responsibility of the manufacturer, the gun dealer, and the gun associations to fulfill their duties to the general public and to specific individuals who have been harmed: the duty to secure weapons, the duty to act reasonably, the duty to look beyond the superficial aspects of someone coming into a store.

We have seen classic examples: The fellow who walks in with the girlfriend and picks out 12 weapons, gives her

cash, she pays for it. It is so suspicious that the operator of the gun store calls ATF and says, well, I got the money, they got the guns, but watch out for them. That was the circumstance that led to a chain of causation to the serious wounding of two New Jersey police officers. That gun dealer had an obligation to avoid straw purchases. He did not even follow the standards of the industry in terms of being careful of selling multiple guns to some person under those circumstances.

So it is not about the crimes of others being attributed to gun dealers and gun manufacturers. It is not about social conditions that are being excused by these suits. It is about whether an individual had a duty to another person who was injured and failed to carry out that duty.

One of the major reasons we are here, taking very radical action to change 200 years of legal history in the United States, taking the radical action of going into 50 States and saying, We don't care about your laws—the General Assembly of Rhode Island, the General Assembly of North Carolina, of Alabama—we don't care about your laws, we don't care that for 200 years, you specified the standards for negligence in your State, we are changing them for these special people. We don't care that your courts should have the right to take the claims of your citizens who have been harmed. We don't care about that. And we are doing it for a very narrow, defined group of individuals. This is a radical departure from the standards we have adopted and abided by for 200 years.

The pretext for all of this is that there is this huge crisis with respect to manufacturers that threatens their existence, that they are financially on the ropes, that these suits are numerous and literally driving them to bankruptcy.

Where are the facts? The facts that we can establish from the public filings of certain companies suggest that there is no crisis. There is no crisis at all. This is a manufactured crisis. This is a pretext to do the bidding, I believe, of the gun lobby. If you look at the facts as reported, there is no financial crisis that is apparent.

Yesterday, my colleague, the Senator from Idaho, read a letter from the president and chief executive officer of Smith & Wesson that talked about or tried to explain their filings with the Securities and Exchange Commission, their 10–Q filing, and concluded with a stirring passage about the necessity, the criticality of this legislation to Smith & Wesson. It gave the suggestion, of course, that my discussion of their financial reports was somehow inaccurate or incomplete. So I went back and I got their 10–Q report, which was filed on March 10, 2005, for the period January 31 to March 10. It was filed, let me say, March 10, 2005.

They go on to describe these suits, as generally is done. They conclude:

> We monitor the status of known claims and the product liability accrual, which includes amounts for defense costs for asserted and unasserted claims. While it is difficult to forecast the outcome of these claims, we believe, after consultation with litigation counsel, it is uncertain whether the outcome of these claims will have a material adverse effect on our financial position, results of operations, or cash flows.

They are not quite certain whether those cases will cripple them. They go on to say:

> We believe that we have provided adequate reserves for defense costs.

They go on and say further:

> We do not anticipate material adverse judgments and intend to vigorously defend ourselves.

In a sworn statement to the Securities and Exchange Commission, they say: We don't know if this is going to be critical to our financial status. In fact, we don't anticipate material adverse judgments. We don't think any of these cases will be resolved in a way that will negatively affect our position, and we will vigorously defend ourselves.

They went on to say, and we said this before on the Senate floor:

> In the nine months ended January 31, 2005, we incurred $4,535 in defense costs, net of amounts receivable from insurance carriers, relative to product liability and municipal litigation.

That is $4,500, basically, out-of-pocket costs they have received from reimbursements from insurance companies. That is the nature of insurance: You pay the premium; if something happens, you get reimbursed.

> During this period, we paid no settlement fees relative to product liability cases. As a result of our regular review of our product liability claims——

looking at these claims we talked about here as strangling their ability to be competitive and to survive——

> we were able to reduce our reserves by $286,022 for the nine months ended January 31, 2005.

This is such a perilous threat to a company like Smith & Wesson that they are actually reducing the reserves they have on hand to handle these claims.

Again, this is not a crisis. Again, their own data suggest—this from their Web site. This is 2001. These are the industry municipal cases pending or on appeal: 32 and 10 in 2001; in 2002, 26 and 8; 2003, 20 and 5; 2004, 13 and 4; 2005, 4 industry municipal cases pending and 2 product liability cases pending against Smith & Wesson.

The curve is going the wrong way for a crisis. It is going down: four, and two pending cases. It suggests that the courts are doing their job, that the present system we have in place is actually handling these cases pretty well. There is no flood of cases coming over the transom. In fact, this is exactly consistent with their reduction of the reserves for liability because it appears that these cases are dwindling, not increasing. It appears that the system is working pretty well right now. Yet we are here today debating legislation that will deny the rights of individual citizens to go to court, rights they have enjoyed for 200 years in this country, rights that stem not from the actions of criminal third parties but from the failure of the individual defendants to take appropriate action in their duty with respect to the general public and specific individuals.

It is the same with respect to other companies for which we have public records. Many of these companies are privately held. Beretta USA is domiciled in the United States, but it is a subsidiary of an Italian corporation which is privately held, and they are not publicly reporting. But all of this suggests again—not only with Smith & Wesson but with Sturm, Ruger—that there is no material adverse impact reflected by these individuals in their reporting under the pain of penalty for perjury under the Securities and Exchange Commission.

Also, there is a general record of claims and legal cases which goes to suggest that these suits are not an epidemic. As we have indicated before, from 1993 to 2003, 57 suits were filed against gun industry defendants out of an estimated 10 million tort suits. I am not good at math, but that is way below 1 percent. This is not an epidemic. This is not a crisis. Certainly this is not a crisis that is going to threaten our national security.

We have heard claims that the gun industry is being forced to spend hundreds of millions of dollars. The alleged litigation costs have risen in $25 million increments. In fact, I think they have risen since we started this debate, from what I have heard, without any kind of factual data to support them. They are just claims that they are spending all of this money. In fact, if you look at these SEC reports, it hardly adds up to $200 million. Indeed, it seems, based on Smith & Wesson, that reflecting the declining cases they are actually reducing their reserves and potentially, hopefully, reducing what they have to pay out of pocket. But these estimates grow and grow and grow. In 2004, it was $150 million in July. In November 2004, other estimates, $175 million. Now it is up to $200 million. I think I heard in this debate $250 million. No substantiation, no documents, no data.

This is not a crisis. Yet we have displaced the Defense bill to take up this legislation. We have displaced other legislation that could be extremely valuable in order to take up this legislation. Because there is no crisis——

Mr. DURBIN. Will the Senator yield for a question?

Mr. REED. I am happy to yield.

Mr. DURBIN. First, I thank the Senator from Rhode Island for his leadership on this issue. The Senator from Rhode Island is a member of the Armed Services Committee. I think it raises some questions and bears repeating that we left the Department of Defense authorization bill, which was on the floor of the Senate, the bill for our Department of Defense that covers our

soldiers and their families, buys the necessary equipment so they can execute the war successfully and come home, with amendments pending relative to payments to widows and orphans for soldiers who died in the line of duty, with amendments pending to provide additional assistance to totally disabled veterans, with an amendment pending that would have provided additional compensation to members of the Guard and Reserve who happen to work for the Federal Government and are activated.

I would like to ask the Senator from Rhode Island, can the Senator from Rhode Island tell me, before we moved to this special interest legislation to protect the gun industry manufacturers and dealers from personal responsibility for their wrongdoing, would the Senator from Rhode Island describe for those following the debate what was on the floor of the Senate when the Republican leadership decided to move to this bill?

Mr. REED. I thank the Senator from Illinois for his question. There were a series of extraordinarily important questions with respect to the quality of life for our soldiers and their families: childcare amendments, amendments with respect to veterans health care, amendments that applied not only to active-duty personnel but their dependents. We had passed legislation already, an amendment that would increase the number of up-armored HMMWVs we are providing to our soldiers. That stands in abeyance until we finish the legislation.

There were important inducements for additional service and enlistment that are necessary to meet the growing and real crisis in recruiting military personnel. If you want to talk about a crisis, it is a crisis, the fact that our Army, despite efforts, has fallen short of the recruiting goal at a time when we need every person to fill out the demand for operations in Iraq and Afghanistan and around the world. It is extraordinarily serious.

I don't know if I can find it, but I saw an editorial cartoon in a magazine, a newspaper, which had a picture of a humvee and three soldiers. The caption, if I recall it, is:

> Why don't we just take a 4-week recess during this difficult time and then return to this operation afterwards?

Essentially, I think it captured the dilemma the soldiers are feeling right now. What are we doing?

As the Senator previously indicated, in the Army Times, they wrote of this:

> Senate delays action on the defense bill.

I ask unanimous consent to have two articles printed in the RECORD, one from the Hill and the other from the Army Times, which talk about this issue of leaving the Defense bill and also the impact on procurement of weapons because of this legislation.

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

[From The Hill, July 28, 2005]

FRIST: LAWSUITS THREATEN GUN SUPPLY

(By Roxana Tiron)

Senate Majority Leader Bill Frist (R-Tenn.) interrupted debate on the 2006 defense authorization bill to consider legislation to block lawsuits against gun manufacturers, saying that ''frivolous'' litigation could leave the Defense Department without a U.S. source for sidearms.

Despite Frist's alarming claims, the military is not currently facing any shortage of small arms, according to Pentagon officials.

American gun manufacturers supply the military with hundreds of millions of dollars worth of small arms, which includes a broad variety of firearms from pistols to machine guns. The weapons are worth even more when ammunition, modifications and special features such as optical sights are included.

The U.S. firearms industry has been facing repeated lawsuits, an attempt to hold manufacturers liable when guns that were sold lawfully are subsequently misused by criminals, explained Lawrence Keane, senior vice president and general counsel for the National Shooting and Sports Association, a nonprofit organization representing the firearms industry.

The Senate is considering a new version of a gun-liability measure that was effectively killed by its own supporters last year. Sponsored by Sen. Larry Craig (R-Idaho), the measure would prohibit civil-liability actions against manufacturers, dealers and importers of firearms and ammunition in any state or federal court.

In April, the District of Columbia Court of Appeals ruled that any victim of a shooting in the District could sue the industry, which Keane said would make gun manufacturers ''absolutely and automatically'' liable for a criminal shooting in D.C. Beretta USA, the manufacturer of the M9 pistol, the standard firearm for the armed forces, expressed concern that a single jury ruling in the District could bankrupt the company.

''Every criminal shooting in the district gives rise to a suit against the industry, and these are the types that need to be stopped,'' Keane said.

''Without this legislation it is probable the American manufacturers of legal firearms will be faced with a real prospect of going out of business, ending a critical source of supply for our armed forces, our police and our citizens,'' Frist said.

Frist's decision to take up the gun-liability measure comes amid an Army review of more than a half-dozen requests for proposals for new small arms. In fact, the Army has extended the request for six months to allow more companies to compete and included the Marine Corps's requests, according to an Army spokesperson.

While the Defense Department refused to comment on ''speculative legislation,'' an Army spokesperson said the Army currently is not experiencing any problems with the supply of its sidearms. The Army is the purchasing agent for most services' sidearms; some exceptions exist for special-operations forces.

Army leaders are revamping their small-arms inventories to be better suited to the kind of guerrilla wars being fought in Iraq. The spokesperson said the Army has not had problems buying these weapons, although the spokesperson acknowledged that because the Defense Department is the largest gun purchaser, it could serve as a ''relevant hypothesis'' for Frist's arguments.

''These frivolous suits threaten a domestic industry that is critical to our national defense, jeopardize hundreds of thousands of jobs,'' Frist said. ''Many support this legislation, and I am hopeful that with the cooperation of members we can complete all action on this legislation before the recess.''

Frist used the gun-liability legislation in part as a strategy to divert attention from amendments related to treatment of detainees and the Pentagon's base closures and realignments. The Bush administration opposes those amendments.

Keane argued that the liability bill still allows manufacturers to be sued if they violate any laws governing gun sales.

''There is nothing in the legislation that prevents the Alcohol, Tobacco and Firearms Bureau from enforcing the gun-control act because a dealer has violated regulations,'' he said.

According to Keane, the gun industry has spent at least $225 million on lawsuits in the past 10 years and small companies such as Charco 2000 have filed for bankruptcy because of lawsuit expenses. Both Beretta and Sigarms, the two top suppliers to the military have been sued numerous times.

''If . . . [a company] like Beretta, which has been sued, is driven out of business, it will not be able to fulfill [its] contractual obligation,'' to the military, Keane said.

He argued that these issues should pose immediate concern to the Defense Department. The firearms (buying) system hasn't ''collapsed,'' said the spokesperson.

Beretta recently received a contract to supply 18,744 M9 semiautomatic pistols to the U.S. Air Force with an option to purchase an additional 5,190 pistols.

The pistol is produced at the Beretta USA headquarters in Accokeek, MD., where it has been made for 20 years. The Air Force plans to buy 34,374 M9s between 2004 and 2007 at a price of $39 million, according to Air Force budget projections. Meanwhile, the Army is planning to buy $8 million worth of modifications to the M9 and M11, which is produced by Sigarms, between 2006 and 2007.

The Navy is planning to buy 1,069 M11s through 2011 at a total cost of $722,000 and to spend $5.6 million on modifications to the M9 pistols, which are supposed to be completed this year.

According to Hoovers, a business-information service, Beretta's revenue is estimated at $72.7 million annually.

Another major gun manufacturer, Smith & Wesson, which provides firearms to law-enforcement officers, told the Securities and Exchange Commission that it is expecting its sales to reach $124 million this year, 5 percent higher than last year.

[From the Army Times, July 26, 2005]

SENATE DELAYS ACTION ON DEFENSE BILL

(By Rick Maze)

Senate Republican leaders decided Tuesday that a gun manufacturers' liability bill is more important than next year's $441.6 billion defense authorization bill.

With Democrats expressing amazement that there could be any higher legislative priority in a time of war than the annual defense bill that includes money for pay and benefits, operations and maintenance, and weapons purchases and research, Sen. Bill Frist of Tennessee, the Senate Republican leader, decided Tuesday that a bill protecting gun manufacturers from lawsuits over the illegal use of firearms was a higher priority.

The decision came after Republican leaders failed to muster the 60 votes needed to prevent amendments not strictly related to the defense budget from being offered to the defense bill.

In a count of 50–48, seven Republicans joined Democrats in voting not to restrict debate, a move that Democratic leaders said would have prevented consideration of amendments to help veterans and survivors

of deceased service members, along with other issues.

With Congress planning to leave town Friday for one-month break, debate on S. 397, Protection of Lawful Commerce in Arms Act, is expected to last two or three days, and then Senate leaders plan to take up an energy bill, an estate tax reform bill and an Interior Department funding bill that has a $1.5 billion bailout attached for veterans' health care programs, leaving no time until September to get back to the defense bill.

The House approved its version of the defense bill in May and has been waiting for the Senate to catch up to begin negotiations with the Bush administration on a final version.

Delay in the Senate is partly a result of senators spending three weeks this spring debating federal judicial nominations before reaching a compromise on President Bush's nominees.

It all points toward a difficult autumn. When the Senate returns in September from its month long summer recess, it will need to consider recommendations of the Defense Base Closure and Realignment Commission, due to finish its work by Sept. 8, and begin deliberations on the John Roberts to the Supreme Court vacancy left by retiring Justice Sandra Day O'Connor.

Mr. DURBIN. I will ask a question through the Chair. The Senator from Rhode Island, who has been speaking about the lack of emergency, the lack of crisis in the gun industry, and the fact that this is certainly not emergency legislation—I don't believe it is even wise legislation for us to consider—the Senator from Rhode Island is a graduate of West Point and a former officer in the U.S. Army. I would like to ask the Senator, who serves on the Armed Services Committee, as he has read these Army Times articles which raise questions about why the U.S. Senate would give up on the Department of Defense authorization bill for our troops, leave it behind and move to this bill, the special interest bill to protect the gun industry from their liability for their own wrongdoing, I would like to ask the Senator, what kind of impact can this have on the morale of the men and women who read about the Senate leaving this important legislation?

Mr. REED. I think at a minimum it puzzles them why we would shift from their concerns, which are so central to our national security and so central to the families of America, to move to a bill that is so narrowly focused on a special interest group and does not help them one bit in terms of anything we might do on this bill.

Perhaps it is summed up. I have located the cartoon. It is as I described before—a group of soldiers in a humvee, and the caption is:

I move we adjourn for 5 weeks and take up this contentious issue after the summer recess.

Frankly, no one in our military has the option of adjourning for 5 weeks to take up contentious issues after that time.

Mr. DURBIN. If the Senator from Rhode Island will further yield for a question to the Chair, I wish to make sure those following the debate understand what this bill does. I ask the Senator from Rhode Island, who has followed this issue more closely than any other Senator on our side of the aisle, is my understanding correct that if this is enacted into law, as a result of this legislation, if you are a gun dealer and you sell a gun to someone you knew or should have known was in a drug gang, a criminal, a drug trafficker, someone who is likely to misuse that gun, use it for criminal purposes, that this bill says that the victims of the violence from that purchaser cannot hold the gun dealer responsible for his negligence in selling this gun to someone they knew or should have known was going to misuse it and create victims, tragic victims, in their community?

Mr. REED. The legislation generally bars all suits involving negligence and restricts the exemption to some categories of specific violations of Federal law which arguably, in your hypothetical, it would not reach. The only exception, to be fair to the legislation, that might allow someone to go to court under the concept of negligent entrustment, which as drafted in the legislation would say you have to suspect, know that the person would use the weapon illegally, and that person has to use the weapon. But most commonly what happens is there is a straw purchaser, so the negligent entrustment argument doesn't work because that weapon is not being used by that person; it is given to a third party.

But I think the Senator's comment is exactly right. There are so many cases where this legislation has been carefully crafted to prevent people going to court, and the best examples are the ones of which we are already aware. The sniper case in Washington, DC, where a young teenager walked into a shop, shoplifted apparently a 3-foot assault weapon which was used to murder too many people here in the District of Columbia. That suit would be prevented by this legislation; in addition, the case of the straw purchaser and the police officer in New Jersey, prevented by this legislation. We have a case pending now where an individual, a young man, was killed by a weapon that was taken out of a factory, and the gun manufacturer would be exempt, immune from liability, even though he had no background checks on his workers who were criminals and drug addicts, he had no security devices and, in fact, missed any rudimentary standard of care that most reasonable people would say is associated with running a gun factory.

Mr. DURBIN. If I could ask the Senator from Rhode Island another question, through the Chair. If someone owned a daycare facility and hired, without any background check and without adequate investigation, an employee with a long criminal record of being a sexual predator, someone hired this person to work in a daycare center and that employee then harmed one of the children at the daycare center, I think the Senator from Rhode Island and I would agree that many would argue that daycare center was negligent, it had a responsibility it did not meet, and that this daycare center should be held responsible, even in court, for the harm that came to the child.

The example that the Senator from Rhode Island used was a gun manufacturer, who hired employees with long criminal records, including felonies, that had guns stolen out of the manufacturing plant by some of these employees with criminal records, and the guns were then used on the street to harm innocent people.

In the second example we have used—not the daycare center but the gun manufacturer—this bill would say you can sue the daycare center because they didn't do a background check on the employee who molested the children, but you can't hold the gun manufacturer liable for hiring employees with a criminal record, putting guns on the street and killing innocent children.

Mr. REED. That is exactly right, in my reading of the legislation. There are certain jurisdictions that have specific laws with respect to background checks on daycare centers. The gun industry is virtually unregulated, which is a very important point here. There is very little regulation deliberately on the manufactured weapons, the standards. As you point out so often with respect to product safety, toy guns are regulated by the Consumer Product Safety Commission, real guns are unregulated in terms of their safety. So there is no legal—very little legal statutory requirement. So it depends upon claims of negligence to get at this harm and to redress the harm caused, and this bill essentially wipes out that civil liability under our court system.

Mr. DURBIN. I ask the Senator from Rhode Island because I think it is a critical point, how many other businesses in America enjoy this exemption from liability, how many other businesses, producers of goods or services are held harmless for their own negligence and wrongdoing in courts of law across America? How many other businesses would have this special interest legislation that is being considered and may be passed by this Chamber?

Mr. REED. Virtually no other. Comments were made on the floor with respect to legislation passed back in 1994 with respect to general aviation. I think it is important at this juncture to clarify that. There was very limited legislation that applied to general aviation aircraft, 18 years or older, in terms of liability because of the concern about the manufacturing base. But there is a distinct difference between this legislation and the General Aviation Revitalization Act of 1994, and it goes to the point we just discussed. There is no more highly regulated industry than the aviation industry. Every time an engine is worked

on, there has to be a log entry made which is subject to the jurisdiction of the Federal Aviation Administration. It is the most detailed legislative scheme we have in place perhaps because the safety of the passengers, all of us, depends upon it. So giving a limited grant of immunity to an industry that is so highly regulated is quite different than telling an unregulated industry you have no liability. That is essentially what this bill does, with very minor exceptions; clearly, I think exceptions which were artfully crafted to avoid the cases that exist today.

Mr. DURBIN. I would like to ask, through the Chair, if the Senator from Rhode Island would further yield for a question. We have talked about the gun manufacturer who did not do a background check on his employees and the employees stole guns without serial numbers on them—the guns went onto the street and were used to kill innocent people—that that gun manufacturer would escape liability under this bill that is before us. I would like to ask the Senator from Rhode Island about the example where someone who is a gun dealer, knows that under the law you cannot sell guns to felons, people convicted of a felony, sees someone who comes in with another person, we call them straw purchasers, someone else who is going to buy the guns, a girlfriend, some other person. We had a case I believe the Senator referred to, a 10-year-old boy in Philadelphia on his way to school gets right to the gates to go into the schoolyard, a gang member comes up and shoots him in the face. He survived, was conscious for a few hours and then lapsed into a coma and died. It turns out that the gun was traced to a store where it was sold to one of these straw purchasers—the other purchaser, the real purchaser who wasn't eligible to buy it, standing next to them. So it was pretty clear what was going on. The store clerk charges extra because there is a straw purchaser involved, acknowledging they know that this gun is being bought by one person to be given to another.

So what the Senator from Rhode Island is telling us is that this bill says the family of that 10-year-old boy shot in the face, who died by that gun, cannot even go to court to hold responsible the gun dealer who knowingly sold this gun to a straw purchaser to avoid the law.

Is that my understanding of this as it is written?

Mr. REED. I think the Senator is right. The only exception that could be argued would, I believe, be the exception with respect to negligent entrustment. As I pointed out, that has been defined to mean that the individual who receives the weapon—you have to have also the suspicion that that person is going to use the firearm. In the classic case of a straw purchaser, they are the conduit to someone else——

Mr. DURBIN. Middleman.

Mr. REED. Middleman. So that the argument made by lawyers would say negligent entrustment, saying they gave it to inflict harm. Therefore, this very narrowly defined exception would not apply. Generally, the case I believe would be thrown out of court.

Mr. DURBIN. I would ask the Senator from Rhode Island, when it comes to protecting gun dealers from civil liability, from being held responsible in court for their wrongdoing, I have read repeatedly that when you consider all of the licensed gun dealers across America, it is a very small percentage that repeatedly sells guns that, when traced, are used in the commission of crimes. It turns out, in my State of Illinois and in many other States, that the gun dealers who are the real wrongdoers, the ones who are abusing the system, are not the gun dealers selling in downstate Illinois, where I live, to the hunters and sportsmen and people who go to target ranges or want a gun for self-defense, the real perpetrators of crime or wrongdoing who are protected by this turn out to be a handful of dealers in my State who again and again and again sell guns that end up involved in criminal activity.

So I would ask the Senator from Rhode Island, who are we trying to protect here when it comes gun dealers?

Mr. REED. The Senator asks an important question. According to Federal data from the year 2000, 1.2 percent of dealers accounted for 57 percent of all guns recovered in criminal investigations—1.2 percent of dealers, 57 percent of the guns recovered from criminal investigation. In fact, the national crime tracing data from 1989 through 1996 gathered by the U.S. Bureau of Alcohol, Tobacco and Firearms and Explosives has a virtual scorecard on these egregious offerings.

Badger Outdoors, Inc., in West Milwaukee, WI, the dealer sold more than 554 guns traced to crimes, 475 of these guns had a ''short time to crime,'' as defined by ATF; that is, almost immediately they were in the hands of someone and had some type of criminal activity.

I could go on.

Well, for the benefit of the Senator, Realco Guns in Forestville, MD; Southern Police Equipment in Richmond, VA; Atlanta Gun and Tackle in Bedford Heights, OH; Colosimo's Inc, in Philadelphia, PA; Don's Guns & Galleries in Indianapolis, IN.

Mr. DURBIN. These are the gun dealers.

Mr. REED. Elmwood Park, IL; Breit & Johnson Sporting Goods in Elmwood Park, IL.

Mr. DURBIN. These are the gun dealers that repeatedly sell guns that are traced to crimes. I ask the Senator from Rhode Island this question. The argument used for this gun legislation is, how can you hold a gun dealer responsible? For goodness sakes. How will they know what is going to happen to this gun? They sell the gun to a purchaser, the gun leaves the shop. Why in the world would you hold the gun dealer responsible? In the cases we have cited, in the examples which the Senator has used, you have gun dealers, 1.2 percent, who are responsible for more than half the guns traced to crimes. In these dealers you have repeated sales, and over and over again, hundreds of times, to those who will use them in crime. It obviously raises a question which the supporters of this legislation can't answer, and that is why you are trying to protect these miserable bums. Why are you trying to say they can't be held responsible for the devastation and killing and violence that goes on, on our streets when they are sitting there churning out firearms that are used day after day in the commission of a crime.

I ask the Senator from Rhode Island, why do we not create an exception in this law for those who are repeat offenders as gun dealers who continue to sell these guns used in crime and we know it and we have the facts to prove it.

Why in the world should we protect them in this legislation?

Mr. REED. The Senator's point is extremely well taken. I think there should be at least that exception. I would argue, frankly, that the bill could be further modified to essentially allow individuals who have been harmed—move away from the issue of municipal suits but that is exactly the political implication—to let those suits survive. In fact, as Senator LEVIN urged, increase the standard from negligence to gross negligence, so further undercutting the argument about frivolous junk lawsuits.

That would be a broader remedy, but your proposal is very wise.

Let me give you an example of that store in Elmwood Park, IL, which I presume is close to Chicago.

Mr. DURBIN. Yes.

Mr. REED. This dealer has sold more than 347 guns traced to crime; 271 of those guns had a short time to crime as defined by ATF—again short transit from the time it was sold to the crime scene. The guns were involved in at least 27 homicides, 46 assaults, 23 robberies, and 271 additional gun crimes. The dealer also sold at least 5,429 handguns in multiple sales. That is another possible important remedy, the issue of multiple sales.

Anthony Garner was arrested for gunrunning after he bought 16 handguns from Breit & Johnson that were then sold to Chicago gang members. At least one of those guns was used in a gang-related killing. Andrew Young, age 19, was killed by Mario Ramos, a gang member with a gun from Breit & Johnson.

The list goes on and on. We have these statistics. These are collected by the ATF. We know what's going on.

Mr. DURBIN. I would ask the Senator from Rhode Island, I am a member of the Senate Judiciary Committee, and we are considering two different bills to deal with criminal gang activity across America, which is a serious problem.

We are coming down with a variety of different ways to deal with these criminal gangs, to investigate them, to break them up, to arrest them, to make certain they face serious sentences for intimidation of witnesses, for recruiting young people into their gangs.

I ask the Senator from Rhode Island, how can a Member stand in the Senate and say they are dedicated to stopping criminal gang activity in America and vote for this bill which allows gun dealers who have clear histories of selling repeatedly to gang members firearms that are being used to kill innocent people? How can a Member say they are against criminal gangs but are in favor of the gun dealers who are providing them with their firearms?

Mr. REED. The Senator raises an excellent point. I phrase it slightly differently, but I reach the same conclusion.

If gun dealers—who now have the threat of a civil suit if there has been negligence—are so cavalier in their attitude about guns, selling them to criminals, to straw purchasers, what happens when they are fully immunized or virtually immunized from any type of liability? What happens when they know that no family is going to come in and say, My son or daughter died because of your negligence, and we are going to see if we can take you to court and get something back—we will never get the child back—but something back.

What about the surviving spouse or children who need something to maintain the quality of their life because they have lost their breadwinner?

There is the case of Conrad Johnson, killed by one of the DC snipers. Those cases would be barred by this legislation.

It is not that the individuals, families, and the survivors are denied their day in court, but any incentive to be responsible, to be scrupulous, to look harder to determine whether that person is buying the weapon at the direction of another, as a straw purchaser, is virtually eliminated. The consequences are going to be much worse. These dealers will be more flagrant, more blatant, less restrained. It is hard to see how they could be more blatant than they are today.

Mr. DURBIN. I ask a final question. There has been a lot of discussion in the Senate about the fact there is no exception for gun dealers who sell their guns to people who turn out to be on the FBI's Most Wanted list or those who may be involved in terrorism.

As the Senator from Rhode Island is undoubtedly aware, immediately after September 11, we raided one of the al-Qaida headquarters in Afghanistan and discovered one of their training manuals in which they gave advice to terrorists coming to the United States about buying their firearms in the United States because it was easy to buy a gun in this country.

I ask the Senator from Rhode Island, when it comes to the exceptions in this bill, is there any exception such as the one suggested by Senator KENNEDY that would put gun dealers on notice not to sell guns to people who are on the FBI's Most Wanted list so that we would say, you cannot get off the hook and be held, that you are not liable, not responsible for wrongdoing with a weapon if you did not take the time to check the FBI's Most Wanted list when you made that sale.

Mr. REED. The Senator is again accurate. Unless Senator KENNEDY's amendment is allowed to be voted upon, there is no prohibition against looking at the person's picture on the FBI's Most Wanted list, looking at the person and saying: Have a nice day. Take the gun.

Again, one could argue that if that person actually uses the weapon, it might be negligence, but if he or she is a straw purchaser or buying lots of weapons to pass out, they would escape liability.

Mr. DURBIN. I might just say, in closing, to the Senator from Rhode Island, when we traced criminal guns used in Illinois to kill people and commit serious crimes and tried to figure out where they were coming from, the largest supplier of guns to the State of Illinois of was Mississippi. In Mississippi, the enforcement of local gun laws is so relaxed and the enforcement of Federal laws is so relaxed that people could literally buy a van full of cheap ''Saturday night specials,'' get on the interstate highways and head north to Chicago, Springfield, and St. Louis, selling those guns on the street.

I ask the Senator from Rhode Island, is there anything in this bill which will make it more difficult for those gun traffickers to buy these guns, turn them loose on the streets to kill innocent people in my State or any State in this country?

Mr. REED. I don't see that. In fact, I don't see that as the purpose of this legislation. This is not about preventing criminals from getting weapons. It is preventing victims of gun violence from getting their day in court.

Mr. DURBIN. I thank the Senator from Rhode Island.

Mr. REED. I thank the Senator for his questions.

The line of questioning that the Senator from Illinois has opened raises the issue: What are the exceptions? How can someone get to court if they have been harmed?

Since we have had a robust discussion, and I see the Senator from Ohio in the Senate, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, when this bill was before the Senate in the last Congress, I came to the Senate to oppose it. I opposed it because it denied certain gun crime victims, certain individuals who were victims of crimes committed with guns, their day in court. It singled out a particular group of weapon victims that it treated differently than we treat any other victims in the whole country. It set them apart.

Unfortunately, the bill before the Senate is no better than the one we had last year. In fact, it is worse. Not only does it grant immunity to the gun industry, the bill also prevents Federal, State, and local government agencies from shutting down gun dealers who violate the law. Local and State governments are responsible for ensuring that restaurants are clean, that doctors are properly licensed, stores do not sell alcohol and cigarettes to our children. Why can't they also ensure that gun dealers and manufacturers operate responsibly? Why do we want to take that right away from them? Yet the current language of the bill before the Senate would do that.

I have great respect for the many firearms dealers and manufacturers around this country who are legitimate, honest and hard working. The vast majority of dealers have no tolerance for buyers who circumvent gun laws. These dealers are also responsible, ensuring that they have adequate inventory control systems in place so that guns do not get lost or become missing.

This bill would not help them. The responsible dealers don't need this bill. Cases filed against responsible dealers and manufacturers who have done nothing wrong can already be tossed out if they have no merit, as any frivolous lawsuit will be tossed out in a court of law if they are filed against any manufacturer of any product or against any wholesaler or retailer of any product.

Who, then, will benefit by the passage of this bill? The people who will benefit are the irresponsible dealers and the irresponsible manufacturers.

Let me describe some cases. Everyone remembers all too well the tragedies of the DC sniper cases. Some of the victims of the DC snipers sued Bull's Eye Shooter Supply, the gun dealer that negligently allowed a Bushmaster rifle to reach the hands of John Allen Mohammed and Lee Boyd Malvo. That suit was successful. In the settlement, the negligent dealer—we could have assumed he would have been found negligent in a court of law—agreed to pay the victim and their families $2.5 million.

If this bill had been in effect a few years ago, these victims would have had no recourse in court.

Or perhaps we remember Danny Guzman, from Worcester, MA. On December 24, 1999, Danny Guzman was shot and killed by a gun that was taken from a factory run by Kahr Arms. Unfortunately, Kahr Arms hired Mark Cronin, an individual with a history of crack cocaine addiction and theft. Cronin was given unfettered access to the untraceable, unstamped guns in the factory. He bragged, in fact, that it was so easy to remove guns that he ''does it all the time and he could just walk out with them.''

Cronin removed one of these guns from the factory. That gun ended up on

the streets, and tragically it was used to kill Danny Guzman. Those are the essential facts.

Danny Guzman's estate, on behalf of his widow and two young daughters, sued Kahr Arms, alleging that it operated its plant in a grossly negligent manner, and in the spring of 2003, a State judge allowed that case to proceed. If this bill passes, however, the widow and children of Danny Guzman would be out of court.

As we can see, this bill cuts to the core of civil liability law and guts it. As my colleagues know, now, under current law throughout this country, the victim needs to prove the defendant acted in an unreasonable manner—basic negligence law, the law those who are lawyers learn about in the first and second year of law school. It is the law of negligence that prevails in courts of law in every type of civil case. It is not unusual. It is what it is.

Under negligence law, if the defendant fails to meet his or her duty to act in a responsible fashion, they are liable for negligence as long as that failure leads to harm to the victim. That is what is required. It is negligence. It is as simple as that. That is the standard. It is a standard we have developed over 200 years in this country, a standard we inherited from the British system. So we have hundreds and hundreds of years of experience in how to apply the rules of law, the common law negligence.

This bill says that those rules will no longer apply for one set of victims. These rules that we have taken hundreds of years to develop will no longer apply to one set of victims and to one set of defendants.

When we study law, one of the first things we learn is the difference between civil and criminal law. Someone who did not commit a crime can still be held liable in civil law to someone else and have to pay monetary damages. That is a basic concept.

This bill, however, changes that fundamental idea of civil law because under this bill a victim cannot sue a gun dealer for damages resulting from illegal actions of a third party without also showing that a dealer is guilty of a violation of the law, even—even—when the dealer has been negligent. Again, that is a fundamental change in our law with one group of civil defendants.

If this bill were to become law, a plaintiff would not only have to demonstrate that a gun dealer acted negligently, but also that the gun dealer broke the law—broke the criminal law. In other words, the plaintiff would—with one lone exception that has already been talked about on the floor a few moments ago—have to prove the gun dealer violated a statute or is guilty of a crime.

We do not require this in any other place in our law. Why do we want to do it in this case? If those who come to the floor in favor of this bill think it is such a great idea to do it in this case, if they think it is such a great idea to require that they have to violate a criminal law before you can sue them, then why not just pass that law for everybody? Why not make it the law of the land that in any civil suit in this country you have to have violated a criminal law? Why not change our civil law, turn it upside down, in all 50 States of the Union, if it is such a great idea?

I do not see anybody coming to the floor who is in favor of this bill saying it is such a great idea to do that. I do not see anybody proposing to do that. Yet they want to do it for one set of victims. They want to single out one set of victims. If you are a victim of guns—and it could be that somebody, a manufacturer, a gun dealer, has been negligent—we are going to require, for you to get inside the courthouse door, for you to even enter the courthouse door, before you can get what every American has the right to have—and that is a trial by jury, a trial, the opportunity to have your case heard by a judge and a jury—we are going to require you to prove there has been a crime committed.

We do not require that for any other group of people. So if they think it is such a great idea, let them come to the floor and propose that, to make it a universal law for every civil suit in the country.

I would like to talk for a moment about the language in this bill that might well prevent the Government from enforcing our gun laws against irresponsible gun dealers. This provision goes well beyond barring civil suits by private citizens who have been wronged. This provision is a new provision. It was not in last year's bill. This provision potentially curtails the ability of the Bureau of Alcohol, Tobacco, and Firearms, the ATF, from enforcing the gun laws that are currently on the books.

Two former ATF Directors recognize the potential harm that comes from this provision. According to Stephen Higgins, ATF Director from 1982 to 1995, and Rex Davis, ATF Director from 1970 to 1978, this broad, new language contained in this legislation in front of us today would likely prohibit the ATF from initiating proceedings to revoke a gun dealer's license, even when that dealer supplies guns to criminals.

Let me repeat that. According to both of these former ATF Directors, this broad, new language would likely prohibit the ATF from initiating proceedings to revoke a gun dealer's license, even when that dealer supplies guns to criminals.

So not only are we shielding these bad apples, bad actors, people who ought to not be doing business, not only are we shielding them from civil liability, now we are coming along and saying the ATF cannot enforce the law against them. What in the world are we thinking?

I think that everyone in this body can agree it is important for us to enforce gun laws that we have on the books. Why in the world is there attached a provision to this bill that would make it harder for ATF to enforce our laws and shut down wayward and dangerous gun dealers? Why in the world would we want to do this? I don't know.

Why would we want to strip away the opportunity of a gun victim to get into court? Why do we want to do either one of those things? I guess the answer is pretty simple. This bill ties the ATF's hands, ties the hands of private citizens, ties the hands of State and local agencies. It shields a certain group of defendants—gun manufacturers and dealers—from liability. This bill grants immunity. It overturns well over 200 years of civil law, 200 years of tort law, 200 years of common law.

If it passes, this bill would fundamentally change our justice system. It would do this by denying one group of citizens access to the court system in order to protect another group.

Why in the world are we about to do this? The only reason I can think of is because there are the votes here to do it. There is the power to do it. It can be done. One group in the country can get it done.

Now, Mr. President, I can count. I know how this vote is going to turn out. But that still does not make it right. Just because there are votes to pass this legislation does not mean it is the right bill for our country, for the victims, or for the American people.

I said this last year, and I will say it again. I will make a prediction about this bill. I will make a prediction about the effect it will have on this group of victims. Yes, the passage of this bill will get rid of some frivolous lawsuits. There is no doubt about that. We could get rid of a lot of frivolous lawsuits in this country by prohibiting access to the courthouse. There will be lawsuits that will never be filed because of this bill. That is true. There is no doubt about that.

But, Mr. President and Members of the Senate, mark my words: If this bill passes, in the future there will be a case, or cases, that will be so egregious, so bad, that it will sicken your stomach, and Members of this Senate will read about it, and Members of this Senate will look up from their paper, or will look up from the evening news, and will say: I didn't intend to do that. I didn't intend for that victim not to be able to go into court. I didn't intend for that child, that man, that woman not to be able to sue that defendant. Oh, I never intended that.

There will be that case, and that day will come. And whether it is a terrorist who is the defendant or whether it is some horrible criminal or whether it is some horribly negligent gun dealer—whoever it is—there will be some case, and we will see it, and we will live to regret this day. You cannot arbitrarily close the door to the courthouse and say, ''You cannot come in, victim, if you are of a certain class,'' and not

have injustice done. You cannot do it. That day will occur, and we will regret what we are about to do.

There is an additional aspect of this bill that has not been talked a lot about; and that is the fact that it is retroactive. It would actually kick existing cases out of court. How dare we do that. How dare we have the audacity to do that. How dare we in this Congress come to the Senate floor and wipe out every lawsuit that has been filed in this country that would come within the parameters of this bill. How arrogant are we to do that? Did we really get elected to the Senate to tell crime victims that their case is frivolous, without ever even knowing the facts of that particular case?

We will have in front of us, in a few weeks, a Supreme Court nominee. There will be a lot of talk, as there already has been, about the separation of powers. There will be a lot of talk about judicial restraint, as well there should be. I probably will be talking about it as well.

What about legislative restraint? We do not talk much about that. We get mad here on Capitol Hill when we pass a bill and the Supreme Court says we did not have the power to pass that bill. I think we should remember what our role is. I do not think anyone elected us to the Senate to bar their ability to go into court—not to completely bar the door. I think it is one thing to set standards and parameters and maybe limits. You can talk about that. But to totally say, ''You can't go into court,'' I think we ought to think long and hard before we do this.

If passed, this bill would kick people out of court retroactively. It would not just bar people from coming to the courthouse. Apparently, that is not enough. No. What this bill does is kick people out who are already in court. It kicks people out who have already survived motions to dismiss and motions for summary judgment. It likely even tosses out victims who have won at trial and are defending their cases on appeal. To me, that is just plain wrong.

The courts are supposed to decide these cases. Juries are supposed to decide them. People are supposed to have their day in court. That is how our system is supposed to work. I do not think it is my job or the job of other Members of the Senate to judge these cases. It is not our job to determine whether these cases should or should not proceed. It is not my job to determine whether someone is negligent or is not negligent.

I also think it is not my job to tell a victim that he or she does not have the right to go to court and present a case to a judge or a jury. People in this country are supposed to have their day in court. That is fundamentally the American way. This bill creates two classes of victims in this country. If you are injured by any industry in America, you can file a lawsuit in State court in an attempt to redress your injury. After the passage of this bill, however, if you are injured by the gun industry, you are likely out of luck.

Other industries face legal challenges. Other industries, other defendants, have had lawsuits filed against them they do not like. Other defendants, every single day in this country, face suits that in their eyes, many times, are frivolous, that they cannot stand, that they do not think are fair. But they are not here petitioning us, telling us we should pass a law that blocks the ability of someone to sue them. Other industries are involved in cases where many people die. We understand that. We do not grant to them this kind of immunity from civil liability.

I support the second amendment. I support individuals' rights to own guns. I support gun manufacturers. I support legitimate gun dealers. And I support responsible tort reform. I certainly understand there are some abuses in the system, and that sometimes Congress needs to act to prevent these abuses. For example, just recently, I voted in favor of class action reform, and we passed that legislation to modify certain class action procedures.

But what we are about to do in this Congress, in this Senate, is wrong. This bill keeps victims out of court altogether. This bill is unfair to victims. But more important than that, it is a horrible precedent. If we do this, this time, what is to stop a future Congress—where there are the votes, maybe configured differently—from saying: ''Oh, there is another group of victims, and we need to protect them, another group of victims that we are not going to protect, another group of defendants that we are going to protect, another group of victims to whom we are going to say, you can't sue them, you can't get your day in court''?

If we deny this group of victims in front of us today their rights, what is to stop a future Congress from denying another group of victims their rights?

We need to think about this long and hard before we cast this vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

THE GOOD NEIGHBOR

Mr. BYRD. Mr. President,

The roses red upon my neighbor's vine
Are owned by him, but they are also mine.
His was the cost, and his the labor, too,
But mine as well as his the joy, their loveliness to view.

They bloom for me and are for me as fair
As for the man who gives them all his care.
Thus I am rich because a good man grew
A rose-clad vine for all his neighbors' view.

I know from this that others plant for me,
That what they own my joy may also be;
So why be selfish when so much that's fine
Is grown for me upon my neighbor's vine?

The appreciation of a good neighbor is among the oldest, most cherished, and enduring of human values. It is a value that transcends both time and space.

This value was vividly and eloquently expressed more than 2,000 years ago in the Bible which commands us in eight different passages to love our neighbors: Leviticus 19:18, Matthew 19:19, Matthew 22:39, Mark 12:31, Luke 10:27, Romans 13:9, Galatians 5:14, James 2:8. In fact, this is one of the most repeated commands in the Scripture. In other passages, the Bible tells us how to treat our neighbors, Proverbs 25:17 and Romans 15:2; and in others warns us against mistreating our neighbors, Deuteronomy 19:14, Exodus 20:16, Proverbs 3:29.

The appreciation of a good neighbor is also a value that knows no cultural or geographical boundaries. An old Chinese proverb, for example, maintains that ''a good neighbor is a found treasure.''

In the United States, towns and states celebrate Good Neighbor Days. Across the country, municipalities, corporations, radio stations, and newspapers present Good Neighbor Awards. Stores and businesses proclaim ''Good Neighbor Days'' to promote sales. Since the early 1970s, the Federal Government has celebrated an annual Good Neighbor Day. This year Good Neighbor Day will be observed on September 25.

The web site for the national Good Neighbor Day points out that ''being good neighbors is an important part of the social fabric that makes ours a great country.'' Indeed it is. Good neighbors are always there when you need them, offering a helping hand, providing comfort.

Seldom have I observed a stronger sense of neighborliness than among the coal miners in the West Virginia communities where I spent my boyhood years. Fred Mooney, a leading figure in organizing the West Virginia coal miners in the early Twentieth Century, in his autobiography, ''Struggle in the Coal Fields,'' recalled how his coal-mining neighbors, although themselves quite poor, sacrificed to help him and his family with food and clothes after he had been fired from his job and blacklisted for his union activities. Mooney explained, ''This is the spirit of fellowship, love, and devotion that permeates the life of a union coal miner. He will give until it hurts and then divide the rest.''

That, Mr. President, is loving thy neighbor: ''giv[ing] until it hurts'' and expecting nothing in return.

I have observed this sense of neighborliness following mine explosions, floods, and other disasters that have befallen on my state over the years. I will never forget how the people of Buffalo Creek, WV, came together following a disastrous flood in that community. How they worked together and shared together while caring for and comforting each other, thus enabling themselves and their neighbors to survive that horrible tragedy. Being a good neighbor involves most often small, simple acts of kindness. The former Speaker of the House of Representatives, Tip O'Neill, liked to point

out that ''all politics is local.'' Being a good neighbor is also local. It begins right over the backyard fence. It involves small, simple acts of kindness, as well as dramatic gestures during catastrophic events.

A good neighbor is the friendly face who shows up with a cake or a pie at the house of a family who has a member who is ill. A good neighbor is a person who mows the lawn of the widow down the street. He may be the handyman who is quick to pull out his tool belt when a neighbor has a busted pipe, or a mechanic who starts his neighbor's car on a cold winter morning so he can get to work. He is a neighbor who will cheerfully shovel your sidewalk when it snows, or rake leaves, just to make life easier for you.

Such simple acts of kindness are part of the social fabric that makes for a better community, a better country, and a better world.

I am thinking now of a neighbor who lives about 3 miles from where I live in McLean, VA. I have known him a good many years. His name is James Nobles. Jim Nobles is a neighbor who is always seeking ways to help my wife Erma and to help me. Many is the time that he has come to my home and sat and talked with my wife, who has gone through a long period of illness, an illness of going on 5 years. Many times Jim Nobles has come by and sat on the front porch with Erma and talked with her. So when Erma and I have been busy or tired, Jim Nobles somehow appears at our door with a basket of food or a cake from the local Giant store. He provides us with transportation if we need it.

On cold winter days, often to my surprise and my delight, I have looked out the glass windows, and I have seen him out shoveling the snow from the walkway to the mailbox. I find he has already shoveled the snow off my sidewalk.

When he is able, he makes sure that my newspaper is on my porch in the morning. There it is, the Washington Post. There it is, Roll Call. There it is, The Hill. Jim Nobles gets up, comes over to my house, 3 miles from where he lives, and brings the papers off the sidewalk onto my porch. I can always tell that it is Jim Nobles because he also places the newspapers in the same fashion in the same place right there at my door. That is a good neighbor. He comes when my hedges have grown a little too long. He tops off the hedges. He shapes them up. When there are some dead limbs on the trees in my front yard, he cuts off those dead limbs and hauls them away. That is Jim Nobles.

Sometimes Jim goes on a vacation. He is retired now. He goes on a vacation. He has a place somewhere down in Virginia, perhaps 100 miles away or more from where we live. Sometimes he goes and spends a few days there at that place. Then what am I to do but go out and get the paper. I have to get up, go out and get the newspaper. It is not a great chore, but it is something.

But lo, to my surprise, the newspaper keeps on being delivered to my door. So for quite a while, I wondered, who is the other good neighbor who pinch-hits when Jim Nobles is away?

On two or three occasions, I have sat up just to try to catch that other good neighbor delivering that newspaper. I remember on one occasion I got up early and I put a little chair beside the front door and I sat there and watched, waiting for that person to walk up and deliver my paper. Jim Nobles was away. But, you know, that neighbor on that particular occasion didn't come, didn't deliver that paper.

So time has gone on, and this morning, I decided I am going to catch this neighbor this time—this good neighbor who delivers my newspaper when Jim Nobles is away on vacation. So there I sat. This time, luck was with me. I saw her come down the street, pick up the newspaper, pick up the Roll Call and The Hill. She came up to the door and put the papers in the spot there and away she darted. It was then that I turned the key in the door. I said, ''Lady, would you wait just a minute? I want to know more about you. What is your name? I want to thank you for delivering this to my door when Mr. Nobles is not here.''

I came to find out that this was a lady from the Philippines. She worked in the area. She doesn't live in the immediate area, but she comes into the area on a bus, she gets off the bus, and on her way to the residence where she works during the day, she stops, picks up the newspaper out there on the sidewalk near my mailbox, walks up to my door, and puts that paper down. Finally, I found this caring, good neighbor whose name I had been wishing to learn. Her name is Ms. Mary Lucas, from the Philippines. I told her this morning that I was in the Philippines 50 years ago this year. I had breakfast at that time with the late President Magsaysay, who was later killed in a plane crash.

So there she was, a good neighbor making her way to work, doing a special favor for someone like myself and then going on, not receiving my thanks. This could have gone on a long time, as it had already gone on a long time. I finally found her and found out her name.

I must confess that at times I feel a little guilty because I am not a better neighbor. My work in the Senate, my family life, and my other responsibilities prevent me from performing the kind, neighborly acts that Mr. Nobles and Ms. Lucas have performed for me over the years. But they, in the truest neighborly ways, never expressed any complaint. They never want anything in return; they never expect anything in return. They just want to be good neighbors. And they are. Indeed, they are treasures.

Mr. President, I wish to take a few minutes of the Senate's time to say how fortunate I am to have such good neighbors. I thought it might encourage all of us to think a little more about being better neighbors. It is the human touch that makes a better community, a better country, a better world. And so on this day in July, in this year of our Lord, I want to thank God for good neighbors, for the inspiration they have given to me and to Erma, for the goodness they have shared with her and with me.

I close with a bit of verse by Edgar Guest:

I have a kindly neighbor, one who stands
Beside my gate and chats with me awhile,
Gives me the glory of his radiant smile
And comes at times to help with willing hands.
No station high or rank this man commands;
He, too, must trudge, as I, the long day's mile;
And yet, devoid of pomp or gaudy style,
He has a worth exceeding stocks of lands.

To him I go when sorrow's at my door;
On him I lean when burdens come my way;
Together oft we talked our trials o'er,
And there is warmth in each good night we say.
A kindly neighbor! Wars and strife shall end
When man has made the man next door his friend.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, for my fellow Senators, let me try to bring us up to speed on where we are. We now have all of the amendments filed and are looking at them and have studied a good number of them over the last hour and a half to determine how we might dispose of them. We are hoping we can put something together.

Senator WARNER from Virginia is here to talk a bit more about his legislation. I see my colleague, the floor manager from the Democrat side, also here. I do want Members to know we are working to see if we cannot bring some finality to this process in a precloture environment or resolve that issue so we can complete our work on not only this but clear the issue of an energy conference which is privileged, a CAFTA recognition of the House bill versus the Senate vehicle, which is privileged, and that can come before us so that we can complete our work in a timely fashion tomorrow and not spill ourselves into Saturday, as could be the case strictly under the rules of the Senate. We hope we may be able to avoid that.

I hope that within a little while, we may be able to look at a package and offer it to our colleagues for their consideration.

Mr. REED. Will the Senator yield?

Mr. CRAIG. Yes.

Mr. REED. Mr. President, I appreciate the cooperation and collaboration. I am pleased also that you are looking closely at these amendments. My position is simple. I believe the amendments are relevant. I hope we can have votes on all of them. I particularly think Senator WARNER's amendment is relevant, pertinent, and important. I hope he can offer that. But it is my hope that we can bring all

of the pertinent amendments up, with appropriate timing, and conclude.

As we stand now, as the rules require, there will be a cloture vote sometime tomorrow. I think I understand also that after that cloture vote, moving from the gun liability bill to any of the other provisions—energy or the Transportation bill—would require unanimous consent. That is another factor that should be considered. So I hope we can resolve this this evening.

Mr. CRAIG. I thank my colleague for that concern. We will be diligent in it. As you know, in the current environment, these conference reports are privileged and they can take us off the floor by the action of leadership for that consideration. That might occur later in the evening tonight. I am not sure that is the case, but that could occur.

Mr. REED. If I may say, my understanding is that once cloture is invoked, to move off the 30 hours of cloture cannot be done by a privileged motion, but by unanimous consent.

Mr. CRAIG. I don't dispute that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I thank the managers of the bill for keeping the Senate advised. I have an amendment that has been filed. I think at this point I will make the motion and ask for the reaction of the managers.

Mr. President, at this time, I ask unanimous consent that we lay aside the pending amendment such that my amendment No. 1625, which is on file, could be given the status of the pending amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object. Under the current environment, I will object.

I do so with this concern in mind. I don't question the sincerity of the Senator from Virginia for the offering of his amendment. I will say that it is similar to but not exactly like the Levin amendment that we have just disposed of. It deals with the issue of negligence or reckless conduct.

There are differences, and the Senator from Virginia may wish to point those out. But it is important for the Senate to know that in their similarities, the Senate rejected overwhelmingly, by the largest vote yet, the issue of negligence and reckless conduct, for it is clearly recognized now by a majority of the Senate that this would drive a major loophole through this legislation and deny the very legislation and its intent. I certainly would not want that to happen. For that purpose, I will object to laying aside the pending amendment and bringing the Warner amendment to the Senate floor at this time.

The PRESIDING OFFICER (Mr. MARTINEZ). Objection is heard.

The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my good friend for being absolutely forthright. I am fully aware of the parliamentary situation. The distinguished majority leader and the Democratic leader—to the extent that he has participated—are acting within the rules of the Senate. I do not ascribe any impropriety whatsoever to the exercise by any Senator at any time of the rules of the Senate. But it does put persons like myself who feel very strongly about amendments we have in a unique situation. I would like to support this bill, but I have grave reservations about those provisions relating to the dealers, and I'd like to have my amendment considered. I will express them momentarily. But the parliamentary situation, as the Senator has explained, does not allow me the opportunity at this juncture—although I may persist by other means—to get this amendment to be given the pending status.

I inquire of the Presiding Officer if the Parliamentarian would examine amendment No. 1625 to determine whether it is germane.

The PRESIDING OFFICER. The Chair advises the Senator that the amendment is germane to the bill.

Mr. WARNER. I thank the Chair. So I have here an amendment that is clearly germane. I regret deeply that I am not able to bring it up such that I and other Senators could debate it and have a rollcall vote, which I would ask for, and if granted, we could allow each Senator to express his or her views on this amendment.

Now, the manager said that we had a debate on the Levin amendment, and I supported the goal of the Senator from Michigan. And I listened to my distinguished colleague from Ohio as he spoke on this general subject. But my amendment is quite different from the Levin amendment. The Levin amendment would cause the gun industry, as some said, to suffer a death by a thousand cuts because it would essentially gut the bill. The Warner amendment does not come anywhere near to gutting the bill.

I feel very strongly that of the gun dealers across this country, if we were able to make an assessment and evaluation, 99 percent of them are law-abiding citizens. They not only want to stay within the law, but they also do not want to be a part in any way of the use of a firearm that might be involved in a crime.

My amendment is to focus in on those dealers who have, over a period of time, experienced, again and again, the loss of firearms from their inventory. And if it can be factually established that a dealer has a record of practices that for one reason or another—probably due to negligence—enables weapons in that dealer's inventory to find their way illegally into the hands of criminals, then that dealer should not be granted the benefits afforded by this bill. Nor should such dealers be spared from a closer inquiry into why they have an established record of having guns go out of that dealership that they cannot account for.

My amendment does not affect the protection from the frivolous lawsuits that exist under this bill. My amendment only addresses that narrow category of dealers who have a record of, again and again, mismanaging their inventory in such a way that they cannot account for a large number of weapons.

More specifically, my amendment does not take away the protections which 99 percent of the gun dealers should be able to avail themselves of, the honest ones, under this bill. I don't do that. My amendment is solely directed at those very few—I repeat, very few—dealers who have established a history of lost or stolen weapons as defined by the Attorney General of the United States pursuant to regulations that my amendment would call upon the Attorney General to promulgate for the industry. My amendment would enable the industry and, most particularly, the small gun dealers to know exactly what are the regulations that should be followed to maintain that inventory and conduct their business so that weapons cannot disappear and, by such disappearance, fall into the hands of criminals. That is what my amendment does. Maybe 1 percent of the dealers would be affected by this amendment. The other 99 percent are accorded the benefits of the underlying legislation.

Why can't we in the Senate voice our opinions on this concept? Regrettably, the decision has been made that at this time the amendment cannot be, even though germane, brought up in such a way as the entire Senate can focus upon it.

My amendment is not an attempt to gut the bill. Indeed, I recognize the gun industry, as I said last night, needs some reasonable, balanced, measure of tort reform. My amendment is offered in good faith, I say to the Senate. It is not just to protect the possible victims from criminal use of a weapon, but it is to protect the law-abiding gun dealers.

If this legislation remains as it is now, without some type of correction, such as mine, there will undoubtedly be unintended consequences.

We need look no further than our own backyard, based on the experiences we had here in the Nation's Capital and in adjoining Maryland and in my State of Virginia, with snipers committing wanton murder. The snipers illegally obtained their gun out of a gun shop that the record shows lost over 200 weapons over a period of a year or two. If another such tragic incident were to occur with a gun dealer who had a similar record of irresponsibility, and that gun dealer was immune from lawsuit, that would cast a very negative feeling all across America toward the gun industry and the gun dealers. They would be called to task to explain why they supported a law, if this is to become law, that would allow that to happen.

My words are one thing, but I want to bring to the attention of the Senate

a document that I find very interesting. In my modest career in the Nation's Capital and in Virginia, I have met a number of lawyers in my time, but one whom recently passed on—I remember working with him on a number of cases, even when I was in private practice—I will never forget. I go that far back, knowing Lloyd N. Cutler of the prestigious law firm of Wilmer, Cutler, and Pickering.

Lloyd Cutler was asked by the Brady organization—Jim Brady, we all remember, was President Reagan's press secretary who suffered a frightful injury at the time there was an assassination attempt against our President. He and his courageous wife in the ensuing years have been unrelenting in their efforts to try and have a balance across America between the rights of those who acquire guns under the second amendment—and I strongly support the second amendment of the Constitution.

But in any event, on January 15, 2004, Mr. Cutler wrote the organization which asked him to diagnose cases and the basic tenets and provisions of the legislation that is pending today.

I ask unanimous consent to print portions of this opinion into the RECORD.

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

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

WILMER, CUTLER & PICKERING,
Washington, DC, January 15, 2004.

Re effect of S. 1805 (108th Cong.) on Johnson, et al. v. Bull's Eye Shooter Supply, et al., No. 03–2–03932–8 (Wash. Super. Ct.)

Mr. MICHAEL BARNES,
President, Brady Campaign to Prevent Gun Violence, Washington, DC.

DEAR MR. BARNES: As you have requested, I have reviewed the likely effect on litigation brought against a firearms manufacturer and dealer in Johnson, et al. v. Bull's Eye Shooter Supply, et al., No. 03–2–03932–8 (Wash. Super. Ct.), if S. 1805 (108th Cong., 1st Sess.) were enacted into law in its current form. . . . The Johnson case is a suit for damages brought by victims of the Washington, D.C., area snipers, John Allen Muhammad and Lee Boyd Malvo, against Bushmaster Firearms, Inc., the manufacturer of the semi-automatic assault rifle used by Muhammad and Malvo, and Bull's Eye Shooter Supply, the firearms dealer from which Malvo allegedly stole that rifle. S. 1805, also known as the Protection of Lawful Commerce in Arms Act, would broadly prohibit many kinds of civil actions against manufacturers and dealers of firearms for damages resulting from the misuse of firearms manufactured by or obtained from them.

S. 1805 contains much of the language of an earlier bill, S. 659 (108th Cong., 1st Sess.), which similarly would broadly prohibit civil actions against firearms manufacturers and dealers.

Mr. WARNER. Mr. President, I will read the last paragraph:

Accordingly, I conclude that the Johnson case does not fall within the saving provision of the Daschle amendment or any other saving provision of S. 1805 would have to be dismissed if S. 1805 were enacted into law.

S. 1805 is legislation from the 108th Congress that is nearly exact to the bill before us today in the Senate. The Johnson case is a case brought by the victims of the DC snipers—I repeat, the DC snipers, the serious murders about which I spoke. Those victims could not have collected had this underlying legislation before the Senate been law at that time.

Is that what this Senate wants? I don't think so. I think I, and possibly other Senators, deserve the opportunity to go into greater length with regard to that provision which does not by any reading give the protection that is needed to victims should a dealer again and again have lost or stolen weapons from its inventory utilized for purposes of a crime. The bill as drafted does not give the protection we need, and I simply ask, let us impose on the Attorney General of the United States, if this legislation were to pass and remain on the books for an indeterminate period, let that Attorney General of the United States decide how best to analyze the gun dealers to establish a framework of regulations that would guide them in the conduct of their business such that we hope a weapon would never escape the inventory and find its way into the hands of the criminal.

I fear some day we are going to see another case. I hope not. But if we do, maybe somebody will come back and examine the record of this colloquy and this debate and reflect on the gun industry's desire to get legislation that does not protect the American public against the negligence and wrongful actions of a very small percentage of gun dealers, maybe at most 1 or 2 percent. That is all I ask.

I see the manager. Does the manager wish to pose a question?

Mr. CRAIG. I do not. I was only going to respond briefly to the Senator.

Mr. WARNER. Please. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, again, I don't question the sincerity or how the Senator from Virginia feels about this issue and the amendment he has offered. But I think it is important to recognize how the current law works.

It does not mean it is perfect, and it does not mean it is always effective. But the Bull's Eye arms dealership in the State of Washington, from which John Muhammad and Lee Malvo, the two snipers who terrorized Washington, Northern Virginia, and Maryland for a time, stole their firearm, had a record of repeated recordkeeping violations and, as a result of that, their license was pulled. The owner of that dealership no longer has his license.

I don't know if the Bull's Eye is still in business, but if it is, it is under a new dealer. Why? Here is the reason why. If you are a licensed firearms manufacturer in the United States—and all are under the Federal firearms licensing—whether you are a manufacturer or a licensed dealer, you must report within 48 hours missing weapons. If they have been stolen or misinventoried, they have to be reported. They have to be reported to the ATF, and they have to be reported to local law enforcement officers in the area as a possible theft, meaning that those guns are out there in the market. So there already is a Federal law and a mechanism that is at work to attempt to accomplish this.

If, by that reporting, negligence can be demonstrated, this bill does not protect in any sense of the word negligent entrustment. That is very clear.

It was argued by a variety of our colleagues earlier in the day as it related to the Levin amendment—and that is the connective thread I spoke about earlier—it is important to understand that we are not without very strict laws today as it relates to the control of inventories of firearms in federally licensed firearms dealers' business locations and manufacturers. If there is a demonstration of negligence, licenses can be pulled and those people can be taken out of business, and they are.

Of course, in the case of the DC snipers—the tragedy we all lived through here—we know the end result tragically enough—people lost their lives. One of those men will be executed and the other is now in prison for life, and the dealership, or at least the owner of that dealership at the time, is out of business and will not get another license. That is the situation.

It appeared at least that they made mistakes in their recordkeeping. As a result of that, they lost their license. If that is the case—I cannot argue, I am not an attorney—that is a clear case of negligent entrustment, but it appears it may have been—if that is the case, I am quite sure that prosecution will move forward. If it is not, so on. Now, in the case of the West Virginia incident that we all know well, the lemon jello case, a straw dealer or a straw purchaser, the firearms dealer was wise to it, and as a result reported it. So I think it is important to suggest that the law is out there and the law is clear and the ATF enforces the law. The law says firearms stolen, report it; inventory off, report it; 48 or you run the risk of losing your license and being put out of business, manufacturer or dealer.

So I do not want any of our colleagues to assume that this is an open area of the law. It is not. By the level of enforcement that the Federal Government and the Justice Department can deliver, it is a clearly enforceable and an enforced section of firearms law in this country. I think that is important for the record to demonstrate.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would like to reply to my good friend. The Senator is absolutely correct about the reporting requirements, but the reality is that some dealers ignore those requirements. They are totally unscrupulous, negligent, and ignore them. The recordkeeping requirements did not

prevent Bull's Eye from losing 200 guns. They went ahead and ignored it. I strongly urge that we allow my amendment. It is but really one sentence. It simply says: On page 8, line 21, before the semicolon insert the following, or an action against a seller that has an established history of qualified products—that is the guns—being lost or stolen, under such criteria as shall be established by the Attorney General of the United States by regulation for an injury or death caused by a qualified product that was in the possession of the seller but subsequently lost or stolen.

We have to have a stronger enforcement mechanism than is in the underlying bill. It has to be strengthened. I say to my good friend, I respectfully disagree, and I think the confirmation by this distinguished counsel, Lloyd Cutler, who concluded that had this statute that the Senator seeks been in effect at the time of the snipers, they could have gotten out from under it.

Some sellers of guns repeatedly are losing firearms or having guns stolen and that is irresponsible behavior on its face. It has to be regulated, and it has to be regulated by the chief law enforcement officer of the United States, the Attorney General.

So I thank the Senator for the opportunity to speak to this. I once again plead with the Senator to allow this amendment, which is germane. If it were not germane, I would say to myself I gave it a good try. I ask the distinguished Senator from Rhode Island, is this amendment of mine involved in any discussions, might I inquire?

Mr. REED. I say to the Senator from Virginia, we think his amendment is very commendable, and we would like to see it brought forward for debate and a vote. I have made that point privately, and I make it now publicly. We think it is, as the Senator says, germane and relevant. I think the Senator is owed a vote, and I would like to see it happen.

Unfortunately, we are having difficulties clearing any amendments, including the Senator's, for voting on the floor.

Mr. WARNER. Mr. President, it was my understanding that the distinguished Senator from Rhode Island and the distinguished Senator from Idaho were working on a possible package of amendments, and the Senator now advises me my amendment is in that package under consideration. Is that a fact?

Mr. REED. I have asked that that amendment be considered. We are waiting. We were not impatient, but there is a limit to patience. I would point out, too, that there will be an attempt this evening to move to other matters such as CAFTA and the Energy bill which will take away time to debate a vote on the pending gun liability bill. I just think we have wasted too much time, that we should establish some rules with respect to the amendments, vote on those amendments and move forward towards a cloture vote.

Mr. WARNER. If I may make a brief reply, I thank my colleague from Rhode Island. I think the managers are working on this situation. I am glad that my amendment is part of the consideration, and I just hope it is granted. As far as the business of the Senate, I entrust it to the majority leader and the Democratic leader as to what matters should be taken up at what time in relation to this bill. So I cannot make any comment on that and do not make one.

The PRESIDING OFFICER. The minority leader.

Mr. REID. If I would not offend my distinguished friend from Rhode Island or my dear friend from Virginia, 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. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF BUSINESS

Mr. FRIST. Mr. President, for the last 30 minutes or so, we have been putting together an orderly way to address several issues: the underlying bill, the gun liability bill; CAFTA; and the energy report, which we received from the House. I know a lot of our colleagues are wondering about voting both tonight—we will have one more vote tonight, and I will go through the request—and then we will have a very busy day tomorrow. We will be here late tonight as well.

Mr. President, first of all, I will be addressing the issue on gun liability.

UNANIMOUS CONSENT AGREEMENT—S. 397

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate resumes the gun legislation tomorrow, immediately following morning business, the only remaining amendments other than pending amendments be the following: Reid amendment No. 1642, 30 minutes equally divided; Kennedy amendment No. 1615 and a first degree, relevant, to be offered by the majority leader or his designee, with 40 minutes equally divided to be used concurrently on both amendments; Corzine amendment No. 1619 and a first degree, relevant, to be offered by the majority leader or his designee, with the same time limitation as above; Lautenberg amendment No. 1620 and a first degree, relevant, to be offered by the majority leader or his designee, again with the same time limitation.

I further ask consent that the cloture vote be vitiated and that following the disposition of the above-listed amendments, the pending Craig and Frist amendments be agreed to and there then be 20 minutes for closing marks, the bill be read a third time, and the Senate proceed to a vote on passage of the bill with no intervening action or debate.

Further, I ask consent that where there are two first degrees to be voted upon, the majority alternative is first.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3045, the House-passed CAFTA legislation. I further ask consent that the statutory debate time be reduced to 20 minutes, equally divided, and that following the use or yielding back of time, the Senate proceed to a vote on the measure without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, first of all, let me say that I appreciate everyone's patience and courtesy this afternoon as we worked through this matter that led to our agreeing to this agreement just a minute ago. It has been very difficult. It is a very contentious issue. Feelings are high on both sides. Everyone acted like ladies and gentlemen. We worked it out, and I think it speaks well of the Senate.

I would ask the distinguished majority leader, having reserved the right to object on his latest request, it is my understanding that immediately upon this request being adopted, we will go to S. 792; is that right?

Mr. FRIST. Mr. President, that is correct. I have two unanimous consent requests. One is on S. 792, and one is on the energy report.

The PRESIDING OFFICER. Is there objection?

The Senator from Minnesota.

Mr. DAYTON. Mr. President, reserving the right to object, I ask the majority leader, will that vote on CAFTA be a rollcall vote?

Mr. FRIST. Mr. President, I will go through the whole schedule shortly, if I can get through the unanimous consent request. Very briefly, we will have a rollcall vote on CAFTA in about 30 minutes, 25 minutes. Whenever we finish that, it would be the last rollcall vote tonight. We will begin voting again tomorrow.

Mr. DAYTON. I thank the majority leader.

Mr. FRIST. I have two further unanimous consent requests, and then we can review everything.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.