Tanzania a step forward on the road to greater democracy and freedom.

Since mid-1992, numerous opposition parties have been registered in Tanzania and multiparty elections have been held at local and the parliamentary by election levels. Yet, as of the results available at the end of 1994, new political parties won only 7 percent of the seats in contested elections. Half of the elections were uncontested. While the Constitution recognizes a multiparty system, the electoral policies and practices of Tanzania continue to support a single-party government.

Clearly, a decision to hold multiparty elections does not mean that democracy, political rights and civil liberties have been fully embraced. Freedom House, a highly respected nonprofit organization that monitors political rights and civil liberties worldwide, rates Tanzania as not free. Likewise the Carter Center describes Tanzania as being moderately democratic, reflecting that while the Government of Tanzania makes formal commitments to a democratic transition, their deeds are not yet commensurate with their pledges.

In October 1995, Tanzania will hold its first national multiparty election. This could be, given transparent and unbiased election practices, a major achievement in the political life of Tanzania. But now is the time for the Government of Tanzania to match the rhetoric of democracy with the tangible actions needed for real democracy to blossom and flourish.

Constitutional adoption of multiparty elections has provided an opportunity for greater democracy. Freedom of the press, equal access to the public media—particularly the national radio—for all political parties, and a politically independent election commission will move democracy closer to a reality. Tanzania has made some progress in recent months. It can make significantly more in the months ahead. I encourage Tanzania's leaders to move forward to provide a level playing field for all political parties for their upcoming national elections.●

ORDERS FOR FRIDAY, MAY 5, 1995

Mr. DOLE. Mr. President, my understanding is that this request has been cleared with the Democratic leader, Senator DASCHLE.

I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. on Friday, May 5; that, following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in day; and, that there then be a period for the transaction of morning business not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for up to 5 minutes each, except for the following: Senator DORGAN for 20 minutes.

I further ask unanimous consent that at the hour of 11 a.m. the Senate resume consideration of H.R. 956, the product liability bill.

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

PROGRAM

Mr. DOLE. For the information of all Senators, shortly after the Senate resumes consideration of the product liability bill on Friday, I hope to be able to lay down a new substitute amendment for discussion for the remainder of Friday's session. A cloture motion will be filed on the substitute, and I hope we can reach an agreement for that cloture vote to occur at approximately 1:30 on Monday.

ORDER FOR RECESS UNTIL TOMORROW

Mr. DOLE. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order following the remarks of Senator SPECTER, who I understand is on the way to the floor.

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

Mr. DOLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE VOTE TO OCCUR AT 4 P.M. ON MONDAY, MAY 8, 1995

Mr. LOTT. Mr. President, at the direction of the majority leader, in consultation with the minority, I would like to make one change in the leader's earlier announcement.

A cloture motion will be filed on the substitute, and the cloture vote will occur at approximately 4 p.m. on Monday, instead of 11:30. This is to accommodate the maximum number of Members for that vote.

Under the prior arrangement, I believe Senator SPECTER will be recognized at this point for his remarks.

I yield the floor, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRODUCT LIABILITY BILL

Mr. SPECTER. Mr. President, I have sought recognition to make a few comments on the pending product liability bill and the cloture votes which were taken today; that is, the vote to close off debate so that there could be a vote on the bill ultimately on final passage, with the rules of our body having unlimited debate and the rules of our Senate requiring there be 60 Senators join on what is called cloture to close off debate, and we had two such votes today. One was 46 in favor, 53 against. The second was 47 in favor and 52 against. So it is obvious on the current State of the record, the Senate is long away from having 60 votes to close off debate and move to a final decision on product liability.

I think that when there are significant, really major, really fundamental changes to a system as profoundly important as the legal system in the United States, that it is a matter that requires very, very careful deliberation, and it is appropriate for the cloture route to be followed and for 60 votes to be required to pass legislation of this importance, of this far-reaching nature.

Mr. President, I have stated on the floor of the Senate on a number of occasions that I believe that reforms are warranted on product liability, but I think they have to be very, very carefully crafted. I believe that after experience representing both plaintiffs and defendants in litigation and having had substantial experience in products liability litigation.

The matter came up in the last Congress, and I voted for cloture at that time in the hopes that we could get a carefully crafted bill. I think that it is appropriate to have a bill which would provide for alternative dispute resolution, as is provided in the current legislation, to adopt the collateral source rule which is contested. But it provides that if an individual has bought insurance and has collected on his or her own insurance policy, then that individual cannot collect again in a lawsuit. The plaintiffs and the individuals and the consumers objected to collateral source rule on the ground that the individual has paid for it so that whatever benefit is received from the insurance policy ought not to be discounted for the defendant. But I think that on balance, given all the factors, that it is appropriate to limit that aspect of a plaintiff's recovery.

I believe that it is worthwhile to have a tightening of the rules on frivolous lawsuits, and perhaps the frivolous lawsuit is really at the core of the litigation problem in America today, lawsuits which are brought without any real merit or without any real foundation.

I think that if we could set the rules to discourage, to eliminate frivolous lawsuits, we would have really solved most of the problem that is present in the litigation system today, to stop lawsuits which are being brought

where they do not have a real basis in fact and in law, where they are brought really to coerce settlements but not because the plaintiff has a real case.

The distinguished Senator from Colorado, Senator BROWN, offered an amendment to tighten up the rules on frivolous lawsuits, and I supported that amendment.

I think that there are things that can be done within the course of the pending legislation which would strengthen the hand of the defendants, such as the amendment offered by the distinguished Senator from Arizona, Senator KYL, who wanted to have the same limitations on defendants as on plaintiffs on the alternative dispute resolution issue. He wanted to leave it up to the States, many of which have provisions on alternative dispute resolution—that is a fancy name for arbitration—where if a plaintiff failed to be reasonable, there could be sanctions on the plaintiff just as under the pending legislation. If the defendant is not reasonable, there can be sanctions on the defendant.

I think that the distinguished Senator from Tennessee, Senator THOMPSON, offered a very important amendment to limit product liability to Federal cases. That is in accordance with the principle that we ought to allow States to make determinations and to have government closest to the people, a matter related to an issue which has been handled by, promoted by the distinguished Senator from Idaho, who now presides in the chair, Senator KEMPTHORNE. He has been here only 2 years and 4 months, if my mathematics are correct, and championed legislation to eliminate Federal mandates, having been the mayor of Boise, ID, and having seen the imposition of mandates coming from the Federal Government—may the RECORD show the distinguished Presiding Officer is nodding in the affirmative—really wanting to have government closest to the people, letting the mayors and State governments decide these issues so that when Senator THOMPSON offered the amendment, that it really ought to be a matter of federalism, and that is something which is very heavily emphasized in the Contract With America. I think that made good sense.

When it comes to a few of the fundamental issues, Mr. President, I have grave reluctance to make very fundamental changes in the present system. One of those areas is on the matter of punitive damages. I do not think that we have really come to grips with the question of punitive damages in our debate.

Punitive damages are set up as a form of punishment as the word ''punitive'' says, when there is some egregious, willful, wanton misconduct on the part of the defendant which really has to be controlled in a civil contest. And a number of the cases that I brought to the floor to illustrate what this really means, where you have a matter like the notorious Pinto case, where the gas tank was in the rear of the car and exploded. As I recollect the figures, it would cost $11 apiece to modify that dangerous gas tank. Ford Motor Co. made a calculated decision, figuring out how many personal injury cases there would be, how many death cases and injury cases there would be, where the motorists and the passengers would burn up, and figured it out that it made dollars and cents, economic value to them, to pay the cost of litigation as opposed to correcting the car.

On the Cutter blood case where it was shown that the defendant had knowledge that blood was being transmitted which contained AIDS, they made a calculation as to what it would cost to cure it and decided not to issue the warning and to have the blood circulated. That came to light, as in the Pinto case, by going into the records of the defendant and finding that out. Or the IUD case, where women were subjected to the IUD which caused infections, sterilization, and tremendous damages, although well known to the defendant company that that was a problem. Or the flammable pajama case. Because there had not been any standard set by the Federal Government, the manufacturer put out pajamas that they knew would become flammable, that is burn up, with very little provocation. Some of the cases put into the RECORD—one specifically that I recollect involved a case where the conduct of the defendant corporation was so aggravated that criminal charges were brought—really, where you have a willful and malicious disregard for human life that constitutes malice and is sufficient to have a criminal prosecution for murder in the second degree.

Some of the cases by big corporations, by big companies, on the cost benefit analysis as to what it would cost to leave the damaged product go on, those are present in many cases. They have been put into the RECORD. That is why it seems to me, Mr. President, that we really ought not to be making fundamental changes which would give a green light and a license to disregard the interests of the consumer. What we are really talking about is the interest of the consumer here, the interest of the general public in trying to weigh what is fair in terms of handling the issues of defendant companies.

I am very concerned about American productivity and especially about the ability of small business to function. I am concerned about some who say, well, the claim is so large and the damages are so enormous, potentially, even though there is no merit, that we would be betting the business if we went to trial and therefore really intimidated and intimidated into a settlement.

I filed an amendment which would limit recovery on punitive damages to 10 percent of the value of the company. I filed that amendment and I offered that as an alternative possibility, with some trepidation, frankly, because of a concern I have that if you limit punitive damages, it may be an incentive for somebody to be wantonly disregarding of the safety of others. It may be that the punitive damage issue could be further contained by analogy to the libel cases where, after a libel verdict is entered under a very tough standard of malice—New York Times versus Sullivan, Supreme Court of the United States. On appellate review, there is a de novo review, the Latin word which means a full review. It is not a matter limited to a decision on whether there is sufficient evidence to support the verdict of the jury.

Customarily, in litigation, when the jury enters a verdict and there is an appeal taken, the appellate court, the reviewing court, will look to see if there is sufficient evidence to support the verdict of the jury. But in libel cases because of the interest in freedom of speech and the interest of limiting the liability of the media—newspapers, radio, television—there is a different standard. The standard is applied that the reviewing court will look at it fresh to decide if there is sufficient evidence so that we will have a check on the jury system if they are capricious or arbitrary or really out of line.

Mr. President, I have expressed the same concern on changing the law on joint liability. And bear in mind that as the cases are built up on punitive damages or joint liability, they are built up by courts which have a very deliberate process, much more thoughtful process than the legislative process. When we have hearings, it is well known, frequently only one or two Senators are present. When we mark up the bill—that is, write it up—it is not really the essence of understanding of all of the provisions. On the issue of punitive damages, there are learned opinions by Justice Scalia, a known conservative writing on punitive damages, from the constitutional perspective, saying there is a constitutional basis for punitive damages and rejecting the claim that punitive damages ought to be overturned. That is in the context of whether there is a constitutional basis for it as opposed to a public policy determination, which would be up to the Congress.

But those kinds of issues are considered and considered very carefully by the courts. I think, fairly stated, having been a party to the judicial process and legislative process, I say unequivocally the analysis given in the court is much more intricate and more thorough than we are able to do in the legislative process. But there are points where we ought to legislate. When the issue of joint liability comes up, I have been reluctant to disturb that.

One of the cases which comes to my mind is the case involving the fatality of our distinguished and learned colleague, the late John Heinz, who was killed in April 1991 in a plane crash when he was riding in a charter plane

and there was a noted problem with the landing gear, and they went by the airport and came away, and a helicopter owned by the Sun Oil Co. came by trying to observe, and there was a crash. The planes fell into a crowded school yard in suburban Philadelphia. There were terrible injuries. If we had made changes in joint liability in that case, the children, some of whom were killed, and some of whom were badly burned, would not be able to recover fully.

So when you have a case where there is joint liability and the issue is raised, why should a party who is only 50 percent liable pay the whole thing when the other party is insolvent, or under the current law has the full responsibility? The law has been established in that effect because joint liability is composed when there is substantial negligent conduct by the party which causes the injuries. If you have to balance the injustice of having one party only partially liable pay the full damages, where others are insolvent, it turns on who is going to bear the loss, the injured plaintiff, who is not at fault, as the children were not at fault in the air collision which took the life of Senator Heinz and others on the ground, and very serious burn injuries.

I filed an amendment at the desk which would seek to limit, to an extent, joint liability. You hear about the cases where somebody is liable only for 1 or 2 percent and the parties liable for 98 or 99 percent are insolvent and the party who is only peripherally involved has to pay the full verdict. It seems to me that perhaps something in the nature of 15 percent might be an appropriate cutoff. That joint liability would not attach if somebody were not liable beyond the extent of 15 percent.

Mr. President, I offer these observations about ways that product liability could be crafted so that we could get legislation out of the Senate, where we might have a different standard on punitive damages to accommodate different review by the appellate courts to eliminate the really outlandish, runaway, or arbitrary jury verdicts, or limit it to the percentage of the net worth of the company—10 percent as I have suggested—so that a company, especially a small company, is not, in effect, intimidated or blackmailed into a settlement, because they cannot get the whole company. Or ways where we might have a limitation on joint liability.

Mr. President, I have been in Congress, the Senate, since the 97th Congress, when we reported out a product liability bill from the Commerce Committee, Senator Kasten. It was a long time before the bill came to the floor after that.

Last year, as I say, I voted for cloture, thinking we might get a bill. I believe that we could get a bill which would take significant steps, most emphatically, on the issues of frivolous lawsuits. So that in opposing cloture—on a vote, we have only 46 Senators who voted for cloture, 53 against; on the second vote, 47 voted for cloture as against 52 against, a long way from the 60 votes.

I make these comments because I think that when we deal with the judicial system, it is not the plaintiff's trial bar which establishes these rules. These rules were established by the courts of the United States. As I say, I have been on both sides of the fence representing plaintiffs and defendants in personal injury cases.

I think where we have so many, many cases of outlandish conduct where big companies put products on the market on a calculation that they would rather pay for the deaths and the damages than to make the correction, if we take punitive damages away, it is not a wise thing for the Congress to do.

I do not think many of our colleagues understand that. After I talked about some of the cases, talked about the blood case with AIDS virus in it, being circulated by one of the big companies, and one of my colleagues said, ''That is awful,'' and I made the comment about it. They had not heard. I do not think they really have reached all of our Members.

Usually, there is not more than one Senator present or two, one presiding, but the rule of this body is that these speeches are made and these presentations are made with not more than two or three or four Senators on the floor. Some are listening in their offices, but relatively few.

These are matters, I think, which yet have to be considered. It is my hope that we can craft legislation which will be curative on some of the issues, especially that of frivolous lawsuits, which I think is at the core of the problem in our courts today. I thank the Chair for staying late. I yield the floor.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 10 a.m. Friday, May 5, 1995.

Thereupon, the Senate, at 6:13 p.m., recessed until Friday, May 5, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate May 4, 1995:

THE JUDICIARY

ANDRE M. DAVIS, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE WALTER E. BLACK, JR., RETIRED.

CATHERINE C. BLAKE, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, VICE JOHN M. HARGROVE, RETIRED.

RESOLUTION TRUST CORPORATION

HERBERT F. COLLINS, OF MASSACHUSETTS, TO BE A MEMBER OF THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD FOR A TERM OF 3 YEARS, VICE PHILIP C. JACKSON, JR., TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A) AND 3034:

VICE CHIEF OF STAFF OF THE ARMY

To be general

LT. GEN. RONALD H. GRIFFITH, 000–00–0000

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

GEN. JOHN H. TILELLI, JR., 000–00–0000

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. GEORGE A. FISHER, JR., 000–00–0000

THE FOLLOWING U.S. ARMY NATIONAL GUARD OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF SECTIONS 3385, 3392, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. WOODROW D. BOYCE, 000–00–0000
BRIG. GEN. ROBERT J. BRANDT, 000–00–0000
BRIG. GEN. JOSEPH H. LANGLEY, 000–00–0000
BRIG. GEN. JOHN B. RAMEY, 000–00–0000

To be brigadier general

COL. JOHN D. LARSON, 000–00–0000
COL. ROSETTA Y. BURKE, 000–00–0000
COL. BURNEY H. ENZOR, 000–00–0000
COL. FRANK P. BARAN, 000–00–0000
COL. ROBERT M. BENSON, 000–00–0000
COL. EDWARD L. CORREA, JR., 000–00–0000
COL. WILLIAM R. LABRIE, 000–00–0000
COL. NAMEN X. BARNES, 000–00–0000
COL. RANDAL M. ROBINSON, 000–00–0000
COL. PAUL D. MONROE, JR., 000–00–0000
COL. LLOYD D. MC DANIEL, JR., 000–00–0000
COL. STANLEY R. THOMPSON, 000–00–0000
COL. HOLSEY A. MOORMAN, 000–00–0000
COL. BRADLEY D. GAMBILL, 000–00–0000
COL. HARVEY M. HAAKENSON, 000–00–0000
COL. DAVID T. HARTLEY, 000–00–0000
COL. DONALD F. HAWKINS, 000–00–0000
COL. EARL L. DOYLE, 000–00–0000
COL. DAVID M. WILSON, 000–00–0000
COL. JAMES T. CARPER, 000–00–0000
COL. WILLIAM T. THIELEMANN, 000–00–0000
COL. FREDERIC J. RAYMOND, 000–00–0000

THE FOLLOWING U.S. ARMY RESERVE OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF SECTIONS 3371, 3384, AND 12203(A), TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. WILLIAM J. COLLINS, JR., 000–00–0000
BRIG. GEN. JOE M. ERNST, 000–00–0000
BRIG. GEN. STEVE L. REPICHOWSKI, 000–00–0000
BRIG. GEN. JOSEPH A. SCHEINKOENIG, 000–00–0000
BRIG. GEN. JAMES W. WARR, 000–00–0000

To be brigadier general

COL. STEPHEN D. LIVINGSTON, 000–00–0000
COL. JOSEPH L. THOMPSON III, 000–00–0000
COL. ROGER L. BRAUTIGAN, 000–00–0000
COL. JOHN G. TOWNSEND, 000–00–0000
COL. MICHAEL L. BOZEMAN, 000–00–0000
COL. WILLIAM B. RAINES, JR., 000–00–0000
COL. JAMIE S. BARKIN, 000–00–0000
COL. JOHN L. ANDERSON, 000–00–0000

THE FOLLOWING U.S. ARMY RESERVE OFFICER FOR PROMOTION TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY, UNDER TITLE 10, U.S.C., SECTIONS 3384 AND 12203(A):

To be brigadier general

COL. JAMES R. HELMLY, 000–00–0000