

Mr. President, Thomas Jefferson said, "The art of government is the art of being honest." I think that is what we are faced with. This matter of Medicare and the budget is not a problem of the Congress, not a problem of those who are trustees; it is a problem for all of us who are citizens of this country, not only for the benefits that it provides, but each of us who must also pay. We need to be honest with one another as to where we are. The idea of covering up problems because it is politically expedient, or the idea that you can shift problems to somebody else because it is an uncomfortable political position simply does not hold. We have to be honest, face the problems, and talk about them. There are clearly some problems in this area of finance.

Let me talk just a minute about the chart. We are into charts around here and it is not a bad idea. It does demonstrate where we are. This particular chart talks about the Medicare hospital insurance trust fund. It talks about the fact that if we do nothing, it will be bankrupt in 7 years. The chart shows the end-of-year trust fund balances up to 1995, and then projects the balances for the years up to 2004. This is not just a chart that is put together for these kinds of purposes. This is a chart that is a result of the Social Security and Medicare Board of Trustee report that was released just a couple of weeks ago. The trustees being at least three or four members from the Cabinet and some public members. They have indicated this fund will be bankrupt in the year 2002 unless we do something. The balance in the health care insurance trust fund was \$133 billion in 1994 and will rise to \$136 billion in 1995.

In 1996, however, the annual deficits starts to erode the balance of \$136 billion and will be broke in 2002. So that is the problem. It is a solvable problem. But it is not one that we can brush under the door, one that we can ignore, or one to make political issues of. It is one that we must indeed solve.

The next chart shows the impact this spending has on the gross domestic product. The blue being Medicare part A; and the yellow part is Medicare part B. Part A is the hospital portion that is funded by payroll taxes. Part B is that portion that is funded by general funds and beneficiary premiums. You can see how it grows. Here is 1970 and, more currently, in 1995; here we are in the year 2020, as a percentage of gross domestic product. This current period is just below 3 percent, doubling in this period of time.

So we clearly have an issue we have to deal with. The alternative is for the program to go broke. The alternative is not to have the services and that, of course, is not acceptable. Unfortunately, the current administration's position is to ignore the problem. It is to say, gee, it is up to the majority to do something about that. I think that is too bad. I think it is going to have to be something that we do collectively, but we can do something about it.

Why are we where we are? Because this program has grown at a rate of about 10 percent per year, and it continues to do so, as opposed to the private sector health care which has been growing at a more moderate rate of about 5 percent a year. This year, it was 4.4 percent and it is on its way down. Yet the Medicare Program continues to go up. Now, some say—and I go back to the political thing—"You Republicans simply want to cut Medicare so you can give tax cuts." That is not true. That is not where we are. The issue is to fix Medicare so that we can continue to have it over a period of time. There simply is not enough money to leave it as it is and just simply fund it without changing it. That is not an alternative. All the money that we have would be in this program.

So the alternative is to find some ways to reduce this growth. What we are talking about doing—and I think you will see generally in the budget, which is not out yet—you will see an effort to reduce it from the 10.5 percent growth to a growth of maybe 7 percent. We will see in the newspapers that they slashed Medicare, cut Medicare. But what we have done is sought to reduce the growth of Medicare, and then we will find some ways to do it more efficiently. There are ways to do that, to give some options. For example, for those elderly who choose to continue as is, that will be an option. For those who would like to move toward some kind of medical savings account, perhaps that will be an option and that would be a choice, and it will be a reduction in the cost of delivering the same medicine.

The point is that we need to be honest with ourselves in terms of what we are doing. This is not a political kind of football or struggle to see who gets political advantage. The real issue is how do you continue to provide services to people who need services and do it in a way that you can, over time, pay for it. That is the issue. Of course, it is part of the budget, because the budget is how much money we can put out to run Government and what kind of benefits we can have.

As for Medicare part B, I suspect there will be an effort to maintain the contributions that are now there—approximately 31 percent instead of 25 percent of the premium that is required to finance it. We have been moving up at 31 percent. We can go back, but if we hold it at 31 percent, the program will continue to be preserved. So there are alternatives. They are not draconian.

This is where we are on Medicare. I think it is an excellent example of our opportunity in this Congress to find some solutions to share with Americans—all of us—the responsibility of making collective decisions, to meet the responsibility of continuing to have programs where there is need, and to do it in a responsible financial way.

Mr. President, I hope that we can go forward with the bona fide discussion of Medicare and a bona fide discussion

of balancing the budget. I do not think anybody will suggest that it is going to be painless. It is not painless in your family when you find you have to cut back on the growth of expenditures. It is not painless in your business when you discover that it is necessary to make some changes in order to make it work. But it is very possible. It is very possible.

It can be done by continuing to provide those essential services, doing them in a more efficient way, and we can collectively do that.

I am pleased that my associates from the freshman class will be on the floor, talking about this issue and other issues, urging Members to take advantage of the opportunity and, indeed, the request, if not demand, from voters for change. There has been a demand for change. There will be change. This is our opportunity to do that.

Mr. President, I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Democratic leader is recognized for 20 minutes.

COMPROMISE NEAR

Mr. DASCHLE. I wish the President a good morning. I want to comment briefly on the series of votes that we will be taking this morning. As the distinguished acting majority leader indicated, there will be a cloture vote this morning.

I think in that regard it is important for people to understand the current circumstances. Senator DOLE has offered an amendment. Senator ROCKEFELLER and Senator GORTON have also offered an amendment, a substitute. We will have the opportunity at some point to vote on those.

I would hope people will vote against cloture again this morning simply to preserve the options that we think are going to be very important, if indeed we reach a compromise here. I think we are getting closer now in the last 48 hours to meaningful compromise.

In that regard, let me specifically single out the distinguished Senator from West Virginia for his remarkable efforts to bring people together, to attempt to find a way to resolve the outstanding differences. He and the distinguished Senator from Washington, Senator GORTON, have done an extraordinary job in the last couple of days in addressing many of the concerns that people have raised. I think we are now beginning to come together in a way that will accommodate some of the concerns that have been raised during the last couple of weeks.

I know that others, as well, have concluded that a compromise is within reach. My distinguished colleague from Louisiana, Senator BREAUX, has also been working on ways to accommodate some of these concerns and bring all sides together.

Senator BREAUX and others have in the last couple of days talked with people on both sides of the aisle in an effort to try to reach a compromise on punitive damages, on joint and several liability, on the statute of repose. I think we are at a point now where we may be able to resolve these outstanding issues in a way that will facilitate a compromise and ultimately bring Members to a resolution on this issue.

In order to allow the Senator time to discuss this particular compromise, I would like to yield the balance of my leader time to Senator BREAUX. Again, I commend Senator BREAUX for his effort in this regard. I believe that he may have found a way with which to bridge the differences and provide Members with an opportunity to resolve the many outstanding issues that still exist. With that, Mr. President, I yield the balance of my time to Senator BREAUX.

The PRESIDING OFFICER. There are 17½ minutes remaining.

STANDARD OF FAIRNESS DESIRED

Mr. BREAUX. I thank the distinguished Democratic leader for his comments and his effort in trying to bring about a compromise that makes sense. A lot of people have been working very diligently on this issue of product liability. The Senate and the Congress has worked on it for a number of years. We have all struggled with it.

I think the standard that we are all trying to reach is a standard of fairness, to give neither people who are injured by faulty products an advantage or people who manufacture those products an unfair advantage. The key I think is a level playing field. The key is fairness to everyone. That is something that has been very difficult.

I want to particularly commend the ranking member of the Commerce Committee, which I serve, Senator HOLLINGS, for the great work that he has done in trying to make sure that fairness is the standard by which we operate.

Also, Senator HEFLIN, I think, has made a great contribution to ensuring that we do not act in haste, but do this very, very carefully.

There have been a number of Members on the Republican side—the distinguished occupant of the chair, the Presiding Officer of the Senate this morning—has also been very involved in trying to create a package that is fair and creates that level playing field that we are all striving for.

There are a number of other Senators I have not mentioned that have been involved in trying to bring all Members together in doing something that makes sense. My own preference is that this is something that the States ought to do. I am a States righter when it comes to personal injury and the tort system, and how the States can handle this can best be decided by the States.

I think, Mr. President, in trying to reach an agreement here today I would urge my colleagues to vote no on the

first cloture motion this morning in order to allow Members to present to the Senate what I think is a fair and reasonable compromise, and tries to balance those who think that nothing should be done on the Federal level and those that think that everything should be done by the Federal Government here in Washington.

I think that the pending amendment that is out there that has been talked about, as a proposed compromise, the so-called Gorton-Rockefeller, their second proposal, is defective in a number of ways, and can be improved in order to reach a fair settlement of this issue, and put it to rest once and for all.

I think Gorton-Rockefeller is effective in a couple of ways. My substitute, which I will offer after cloture is not invoked, will be an amendment to the Dole-Coverdell substitute, which will still be pending, tries to address those defects in the Gorton-Rockefeller in the following ways: No. 1, on punitive damages. This has always been something that has been very controversial, but there is a reason for punitive damages. It says to a manufacturer of defective products, "Do not do it again."

The damages that are awarded have to be in relation to the ability of the defendant to pay. Obviously, a multibillion-dollar corporation is not going to really be affected by a small fine of \$100,000. They will just say it is the cost of doing business, and continue to manufacture the defective product.

So punitive damages serve a purpose. It says to the manufacturers of products that harm people in this country, "Do not do it anymore." It has been very effective. There are products today that are not on the market because of punitive damages. Companies have said "We can't afford to do this anymore and we are not going to do it anymore." There are a number of products that are no longer manufactured—Dalkon shield, asbestos products, products dealing with breast implants. Some automobile manufacturers are no longer producing types of cars, because they know that if they do they will cause problems and they will be penalized doing it. So they make a very practical decision: "We are not doing it anymore."

The problem with the Gorton-Rockefeller substitute is that, I think, it is fatally flawed. They try and solve this problem by saying that small businesses will not be liable for punitive damages if they have 25 or fewer employees. They make a separate category for small businesses of 25 or fewer employees.

That is an interesting way of approaching it. What would happen is that many companies would just structure their operations with 25 or fewer employees. A trucking company, each truck could be a separate company. A cab company, each cab could be a separate company. A boat company, each one could be a separate company. What

do we do in companies that have 23 employees at the time of the injury, or 25 employees later on during a year?

It is very complicated and it really, I think, calls for companies to structure themselves so they can avoid ever having to pay for any punitive damages for products that would cause problems to individual people.

In addition, they say that, well, if the judge thinks that punitive damages should be awarded more than this cap, then the judge can do it; but if the defendant does not like what the judge does, he can ask for another trial. Why do we have to be so complicated? That provision just calls for additional litigation, more cost, more expense, additional trials, by directing a very, very, complicated situation I think is not necessary.

What my amendment will do is to take from the suggestions of other Members who have suggested ideas that address this problem in a fair way. Our colleague, Senator DODD from Connecticut, has suggested something that I think makes sense and is the essence of my amendment. It says that when a jury finds that punitive damages are warranted because of conscious and flagrant violations by the manufacturer of a product, then the decision on how much the punitive damages should be will be decided by the judge. He does it by looking at that particular defendant, determining their ability to pay, determining how successful economically that company is, looking at their intent, how they handle everything, how long the violations continued, and then the judge will make a decision on the amount of the punitive damages that are necessary to prevent this from happening again in the future.

Mr. President, and my colleagues, I think that is a fair way of resolving this problem. A very complicated structure that says 25 or less has one standard, and then the judge can overrule the jury if he wants to, but if the defendant does not like it they can ask for another trial, is too complicated, too time consuming, encourages too many additional trials, and is not the way to do it.

I prefer the suggestion of Senator DODD, which is in my amendment, which simply says if the jury finds the defendant was so negligent in a fashion that deserves punitive damages to be awarded, then the judge will decide what is an effective and correct amount to be awarded.

Second, on the statute of repose, I think the Gorton-Rockefeller amendment is defective again. Remember this uniformity argument we talked about? They kept saying we need to pass this bill because we want to make it uniform throughout the United States. Their bill is defective because it says the statute of repose will be 25 years unless the State wants to make it less. That is not uniform. It says we

can have 50 different States with 50 different statutes of repose and 50 different standards for a person who is injured to have to worry about. That is not uniformity at all.

The statute of repose, of course, says that after a product has been in place for a period of time you can no longer bring a cause of action against that product because it is defective. My amendment says let us make it uniform, 25 years across the country, nationwide; it is the same in every State. That brings about uniformity both for the person who manufactured the product and uniformity for the person who may be injured by a defective product. I think that makes sense and is the right way to go.

The third area I think they are defective in, in their suggestion, is on the question of joint and several liability. What they are trying to do is address the problem of a manufacturer or defendant that is just a little bit responsible, just a little bit negligent. Their argument is if someone is only responsible for 3 percent of the injury he or she should not be liable for 100 percent of the damages for noneconomic damages, that is the pain and suffering type of injuries that a person would receive from a defective product. But the way they have tried to handle this problem is say you are not going to have any joint liability for noneconomic damages and that will take care of the problem. Yes, that takes care of the problem. It wipes out the possibility of an injured person, perhaps, from getting any recovery at all.

What I am going to suggest in my amendment is simply this—and this is the language, again, that has been suggested by Senator SPECTER, who has come up with I think a very good idea to solve this problem. I picked some from Democratic colleagues, Senator DODD, some from our Republican colleagues, Senator SPECTER, and tried to put them together because that is what we have been talking about for the last several days. Senator SPECTER's suggestion, which I have included in my suggestion, is simply to say there is a de minimis standard. If a defendant is responsible for less than 15 percent of the injuries that were caused, they cannot be held jointly liable, they can only be held liable for that percentage of the damages that it has been determined they are at fault for, that they caused. If it is 3 percent they can only be responsible for 3 percent. But after that threshold, if they are 20 to 30 to 40 percent responsible, then they can be held jointly liable. I think that takes care of the so-called de minimis problem, whereby we should not hold someone responsible for the whole amount of damages if they only caused a very small, de minimis, portion of those damages. But after a certain point, joint liability should prevail.

We picked up Senator SPECTER's suggestion, which I think is a very good one, that says if a person is 15 percent or more responsible for these losses, then they can be held jointly liable for

noneconomic losses that they caused. That defendant, of course, has a cause of action for anybody else who is liable for the other portion of the damages. That is what normally occurs. The defendant then brings in the other party and they can be held responsible—to the defendant who has paid the entire amount—for their portion. So the system works very well. But my suggestion, I think, takes care of the de minimis concern that has been expressed by many of our colleagues.

I will offer this amendment and will be able to offer it if the cloture motion is voted down. I think it would be a big mistake, when we are so close to coming up with a compromise agreement, to at this time invoke cloture and prevent the opportunity to offer this amendment with a chance of it becoming law. This is really an attempt to try to reach a legitimate compromise. We can debate this for a long time. We could continue to prevent cloture from being invoked.

I think it is time the Senate bring this measure to a close. What I have tried to do is pick some of the best ideas from my colleagues. I continue to emphasize that many of the things I have in my legislation are the product of the suggestions of some of my colleagues—Senator SPECTER in particular with this de minimis standard, my colleague Senator DODD with the concept of punitive damages being set by the judge after a trial has occurred that determines that punitive damages would be justified. I think that makes good sense, to try to incorporate Republican ideas and Democratic ideas, to put together a package which is truly a compromise.

One of the things the advocates of this so-called tort reform legislation have advocated is a national standard when it talks to punitive damages. I have incorporated their ideas on the national standard being in fact that the plaintiff must show a conscious and flagrant indifference to safety concerns, and the plaintiff must do it and show it by clear and convincing evidence. That will be a national standard now for punitive damages in product liability cases. I have incorporated that suggestion. That is the same as in the Gorton-Rockefeller legislation.

In fact, much of what this substitute that I will offer really incorporates is the better features from the Gorton-Rockefeller language. But it also tries to address the three major areas in which I think they were defective, and those are how punitive damages are set, how they deal with joint and several liability, and how they deal with the statute of repose.

So I hope when we come to the floor to vote on cloture this morning, which has already been set, our colleagues will know there is an effort among many of us who have been involved to some extent in this legislation to try to put together a package of amendments that is truly a genuine compromise, that tries to treat people who are injured by defective products on

the same level playing field that we are trying to treat defendants who in fact have manufactured defective products.

It is improper for this body to try to give advantage to one group over the other group. If we conclude there should be some national standards, then the national standards should apply both to those who are injured as well as to those who make the product that has caused injury, in the same way. It would be unfair and improper to say one side is going to get more fair treatment than the other. I am concerned the provisions that are pending in the Gorton-Rockefeller substitute in fact are not fair; in fact they do allow for more loopholes to be created with the 25-employee limitation, they do create some other problems with regard to the establishment of punitive damages, they encourage more trials, and they encourage, I think, abuse of how punitive damages would be set.

We have tried to offer something that addresses all these problems in a fashion that truly represents a fair and just compromise. But we do need to ask our colleagues—who may be trying to figure out the situation as to where we are—ask them to vote against the cloture motion and allow us to come in with a compromise that I think for once and for all will settle this very, very difficult, very emotional set of issues that we have struggled with for so many days.

The alternative I will offer, and hope to be joined by a number of our colleagues, will be something that will give everybody an opportunity to say we made some reforms but we did it ultimately and finally in a fashion that is fair to everyone involved. With that, Mr. President, is there any time left on the leader time?

The PRESIDING OFFICER. Thirty seconds.

Mr. BREAUX. I will just reserve that 30 seconds in case the leader needs it.

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

The PRESIDING OFFICER (Mrs. HUTCHISON). Without objection, it is so ordered.

NRA'S FUNDRAISING LETTER

Mr. LEVIN. Madam President, recently, the National Rifle Association issued a widely circulated fundraising letter over the signature of Executive Vice President Wayne LaPierre and that letter is full of questionable overheated language. I wish to focus on one paragraph in particular. The letter states, and I am quoting exactly:

In Clinton's administration, if you have a badge, you have the Government's go-ahead