

As you know, I share your deep concern over these incidents and believe that a thorough Congressional review of these, and related federal law enforcement issues, is warranted. However, hearings on these matters would not be properly within the jurisdiction of the Subcommittee on Terrorism, Technology and Government Information. Indeed, when your staff raised this issue with Committee staff more than one week ago, my position on this matter was promptly conveyed. Due to the important nature of these issues and their ramifications for federal law enforcement, hearings should be held at the Full Committee. I intend that hearings will be held in the near future following Senate consideration of comprehensive anti-terrorism legislation. Indeed, I believe the House Judiciary Committee has announced hearings as well. It might prove beneficial to hold our hearings after the House completes its hearing.

The hearing you propose is an important one, but I believe that it is unrelated, in any true sense, to the broader issue of the prevention of domestic terrorism. Accordingly, to hold the hearing as you propose at this time will serve only to confuse these important issues. Indeed, by linking the Waco incident to the terrorism issue through hearings at this time, the Committee could inappropriately, albeit unintentionally, convey the wrong message regarding the culpability of those responsible for the atrocity in Oklahoma City. We must not do this.

I appreciate your concern over this matter. I look forward to working with you on this and all other matters before the Judiciary Committee.

Sincerely,

ORRIN G. HATCH,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 9, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC

DEAR ORRIN: I have your letter of May 8.

I disagree with you on three counts:

1. Hearings on Waco and Ruby Ridge, Idaho, should be held promptly (actually they are long overdue) rather than waiting to some unspecified time in the "near future" or "after the House completes its hearings."

2. My Subcommittee on Terrorism, Technology and Government Information has clear cut jurisdiction both as our authority relates to terrorism and government information.

3. I categorically reject your assertions that the Subcommittee's scheduled hearing will "serve only to confuse these important issues" and "convey the wrong message regarding the culpability of those responsible for that atrocity in Oklahoma City." There can be no conceivable misunderstanding that there is no possible justification for the bombing in Oklahoma City regardless of what happened in Waco or Idaho. The public interest requires full disclosure of those incidents through hearings to promote public confidence in government.

Since I have had and am continuing to have media inquiries on these hearings, for your information I am releasing this exchange of correspondence.

Sincerely,

ARLEN SPECTER.

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

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

EXTENSION OF MORNING BUSINESS

Mr. DORGAN. Mr. President, I ask unanimous consent that we extend the recess period—my understanding is the Senate was to stand in recess at 12:30—I ask it be extended to allow me to speak for 5 minutes.

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

MEDICARE AND THE BUDGET

Mr. DORGAN. Mr. President, the Senate Budget Committee is meeting today, and they are involved in, I think, a gripping, wrenching debate about how they will try to find a route toward a balanced budget. It is an effort that I think needs to involve all of us because I do not know of anybody in this Chamber who has stood on the floor and said they do not agree that a balanced budget is necessary and desirable for this country.

There were some presentations on the floor of the Senate earlier this morning talking about the issue of Medicare, and I wanted to stand and respond to a couple of those comments, because part of this issue of balancing the Federal budget involves the question of Medicare.

We are in a circumstance described, interestingly enough, by E.J. Dionne today in the Washington Post. I would like to read a paragraph or two from his column:

When the House Republicans passed their big tax cut earlier this year, they were not at all interested in what President Clinton or the Democrats had to say about it. They wanted credit for doing what they said they would do in the Contract With America. And they got it.

But now the time has come to pay both for the tax cut and for even a bigger promise, a balanced budget by year 2002. Suddenly, the Republicans are whining that the President has refused to take the lead in cutting Medicare and Medicaid, which is what the GOP needs to do to make any sense of its budget promises.

Mr. Dionne says:

Let's see: When it comes to passing around the goodies, the House Republicans are prepared to take full responsibility. When it comes to paying for the goodies, they want a Democratic President to take full responsibility. And they act shocked, shocked when he refuses to play along.

You can't blame the Republicans for trying. It's a clever, if transparent, strategy.

The point is, there has been a lot of protest on the floor of the Senate and the House in the last few days about concerns many of us have about the Medicare Program and the tax cut that was passed recently by the House of Representatives.

It seems to me that at least some in Congress dived off the high board and showed wonderful form as they did their double twists and have now discovered there is no water in the pool.

A tax cut first, for the middle class they said. Of course, the chart shows something different. Who benefits from the tax cut bill? If you earn over

\$200,000 as a family, you get \$11,200 a year in tax cuts. If you are a family earning less than \$30,000 a year, you get \$120 a year in tax cuts. This is not a middle class I have seen anywhere in America. The fact is that it is a tax cut for the wealthy. That was passed, and now they say we should cut Medicare to pay for it.

Well, we are going to have to reduce the rate of growth in Medicare. No one disputes that. But before we engage in a discussion about what you do about Medicare and Medicaid, many of us believe that the first thing you ought to do is get rid of this tax cut for the rich. It is time to deep-six this kind of a proposal, then let us talk about Medicare. Otherwise, what you have is a direct circumstance that cannot be avoided.

The comparison is obvious: \$340 billion in tax cuts, for \$300 to \$400 billion in Medicare and Medicaid health care cuts. Let us back away from the tax cut. As soon as the majority party does that—and I hope they will—then I think this Congress ought to begin, in a joint effort on Medicare and Medicaid and virtually every other area of the Federal budget, to sift through these things to find out where we achieve the means by which we balance the Federal budget.

But you know, some of us have been through all of this before. Talk is cheap. Talking about balancing the budget is very, very easy. Everyone talks about it.

Last week, I proposed a series of budget cuts, real budget cuts in a whole range of areas that totaled some \$800 billion, and I am going to propose more. That package does not include Medicare and Medicaid, and I know we have to reduce the rate of growth on both of those. But I also feel very strongly that as we approach this problem, we should not allow the other party to pass a very big tax cut first and then say to others later, "Now help us pay for that by taking it out of the hide of your constituents."

Let us join together and work together, but let us do it in a way that gets rid of the tax cut that was ill-advised, bad public policy, not middle class, but essentially a tax cut that benefits the wealthy. Get rid of it, disavow it and then move on together in every single area of the Federal budget and do what is right for the country.

That is what the American people expect and deserve, and I think that is what will benefit this country's future in a real and meaningful way.

Let me thank the President for allowing me to extend the time. With that, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m., plus the unanimous consent for additional time, having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:37 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. What is the pending business and what is the status of the pending business?

The PRESIDING OFFICER. The pending unfinished business is H.R. 956, and the pending question is amendment No. 709. The Senate is operating under cloture.

Mr. GORTON. Is that the Gorton-Rockefeller-Dole amendment to the Coverdell-Dole amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. GORTON. Mr. President, since we are now under cloture and without the presence of my colleague, Senator ROCKEFELLER, I should like, very tentatively, to announce what I hope the course of action will be this afternoon.

I will, unless there is objection, within a reasonable period of time, ask unanimous consent for a minor but significant amendment to the Gorton-Rockefeller-Dole amendment, a proposition that does require unanimous consent to keep the undertaking that Senator ROCKEFELLER made with respect to the right of a new trial after a judge imposed additur.

After that, I would propose that we go forward by adopting the Gorton-Dole-Rockefeller amendment and the underlying amendment and then having a debate on any further amendments to the bill, some of which will require unanimous consent in order to bring them up, as I understand from the Parliamentarian, because of the position in which we find ourselves.

Senator ROCKEFELLER and I have agreed that amendments from the other side, during the pendency of cloture, that Members opposed to this bill want to bring up ought to be allowed to be brought up, and certainly we will grant unanimous consent for that taking place.

Each of these will require cooperation and essentially unanimous consent. Senator ROCKEFELLER is not back yet. One of the opponents to the bill is here. I am going to suggest the absence of a quorum so that Members can digest this request, so that the leaders can get together if they wish, and so we can proceed for the rest of the day. I hope that we will end up being able to finish the entire bill and having our final vote on final passage before the day is out, as the leader would like to go on to other bills.

Mr. HEFLIN. If the Senator will withhold the quorum call, regarding what the Senator has said about asking

unanimous consent, I think Senator HOLLINGS should be on the floor to respond to that. I think he has some feelings on it. However, I do realize this: It is my information that unless that happens, then unanimous consent is going to be necessary for each and every amendment to occur. Now, I have been talking with various people on our side who are very knowledgeable on parliamentary proceedings. I think it is something we will want to look at. If we enter into a quorum call, we ought to investigate and see exactly what the parliamentary status is and what Senator HOLLINGS' feelings are on that. He articulated to me earlier rather strong feelings against it. But he may have reconsidered it since that time.

Mr. GORTON. I think the Senator from Alabama is correct about the parliamentary situation. Certainly, given Senator HOLLINGS' views on the subject, I want his full knowledge and participation before we go ahead. My announcement was just in hopes that we can get interested people here to make those decisions. Awaiting our ability to do so, 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. WELLSTONE. 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. WELLSTONE. Mr. President, am I correct that we are now on the product liability bill?

The PRESIDING OFFICER. The Senate is now on that matter, H.R. 956, the product liability bill under cloture.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I want to speak about this legislation that is before the body, and I would like to talk about what I think is at stake in the vote that we just cast and what would be at stake in some votes that we will also be casting over the next day or day and a half.

As I see it, we started out with a bill that was unfair, which I think tipped the scale of justice away from consumer protection and in favor of corporate wrongdoers. Then as we went along, there was an overreaching by some of the insurance companies and other big corporate defendants, and yet more amendments were attached onto this bill making it truly awful. Then as a result of several cloture votes—when it was clear that this piece of legislation with all of the additional awful amendments could not pass—it was stripped down to now being just profoundly wrong for people in this country, which is not what I would call much of an improvement.

Mr. President, I am not a lawyer. But as I understand the features of this bill there is a tremendous amount of unfairness. I quite frankly cannot figure out why this body went ahead and invoked cloture. First of all, there is still

a cap on punitive damages, as I understand it, of \$250,000 or twice compensatory damages. Compensatory means both the economic and the noneconomic damages. So that, for example, if you were not an executive of a large company but a wage earner, if you did not make as much money, if you were a woman—women generally speaking make less than men in the work force—or if you were a senior citizen, and you were hurt by exactly the same behavior and received exactly the same harm from exactly the same defendant as some CEO, there would be differences in terms of what the award would be. The punishment would be greater for hurting the CEO.

This is still an absurd result and still an indefensible one. When I spoke last week I asked my colleagues to consider the faces of people who will be hurt by this provision. LeeAnn Gryc from my State of Minnesota was 4 years old when the pajama she was wearing ignited leaving her with second- and third-degree burns over 20 percent of her body. An official with the company that made the pajamas had written a memo 14 years earlier stating that because the material they used was so flammable the company was "sitting on a powder keg". This latest proposal, the Gorton-Rockefeller substitute, would cap the punishment the defendant receives. How would this affect LeeAnn? It is not clear. All of that would depend upon what kind of compensatory damages the jury awards. Are we really willing to sit here in Washington, DC, and change that and preempt Minnesota law and make that kind of determination?

Mr. President, this proposed improvement has new language which would allow a judge to award higher punitive damages than the caps would otherwise provide if the judge thinks it is necessary to serve the twin purposes of punishment and deterrence. Again, first of all, what we do is set this cap and it is either \$250,000 or twice a combination of economic and noneconomic damages which is discriminatory, by the way, toward low income, moderate income, middle income in terms of how that formula works out. Then we go on.

When you think about the case of LeeAnn Gryc, or the case of a whole lot of other people who are hurt in this country, who is prepared to say that the cap ought to be \$250,000 or a little above? Who is prepared to say that a defendant should be punished less because he or she hurt a wage earner as opposed to a CEO of some of the largest companies in this country? I do not see the Minnesota standard of fairness.

The new language then, in what is apparently supposed to be an improvement, allows the judge to award more punitive damages than the caps would otherwise provide, if the judge thinks that it is necessary to serve the twin purposes of punishment and deterrence. But what happened to the jury? People on juries elect us to office. We have all