In his letter he wrote that he and others on the judiciary were being ''Willy Hortonized.'' He went on to write, ''I regret that there are those who are willing to sacrifice my life's work and reputation for their own political gain.'' Judge Sarokin also claimed that he ''had intended to remain on the court so long as I was fiscally and mentally able. But the constant politicization of my tenure has made that lifetime dream impossible for me.''

Give me a break. Mr. President, Judge Sarokin has illustrated once again his failure to appreciate the proper role of a judge. As a sitting judge he has issued a partisan political screed. But the partisanship of Judge Sarokin's letter is also illustrated by what the judge fails to mention. As early as March 4, 1996, this year, it was reported that Judge Sarokin wished to take senior status and that he wanted to move to California so that he could be near his family. Yet this fact is not mentioned by the judge in his letter to President Clinton. According to a March 4 article in the New Jersey Law Journal ''Sarokin confirmed through a secretary that he will take senior status effective September 1st.'' This article appeared long before my March 29 floor speech which called attention to Judge Sarokin's activism on the third circuit. In fact, in my speech, I mentioned the judge's plan to step down because it had already been announced and articulated. Essentially, Judge Sarokin had hoped that he could take senior status which would have reduced his workload to 25 percent of an active judge's caseload and move his chambers to California—In other words, from the third circuit on the east coast to California on the west coast.

In other words, Judge Sarokin wanted quasi-retirement in California, the State of his choice. Unfortunately for Judge Sarokin, his colleagues on the third circuit were not thrilled with his early retirement plans, and on the 22d unanimously voted to deny Sarokin's request to move his chambers to California.

I take that out of the Recorder of May 6, 1996.

As one unnamed colleague on the court told a reporter, ''It took a lot of chutzpah for him to leave after only 22 months on the bench.'' Boy, do I agree with that statement. Former law clerks and colleagues told the press that prior to the third circuit's decision Sarokin had already sold his home in New Jersey—in short, prior to his stirring announcement Judge Sarokin wanted to reduce his workload and was intent on moving to California. Yet, Judge Sarokin failed to make any reference to this episode or these matters in his letter to President Clinton. In fact, Judge Sarokin had the nerve to say that he ''had intended to remain on the court so long as he was physically and mentally able.'' Bear in mind his request to take senior status had been denied just 6 weeks ago. Perhaps Judge Sarokin thought he could escape scrutiny for this obvious lack of forthrightness.

Judge Sarokin's letter, its assertions as well as its omissions, demonstrates how some view Federal judges as philosopher-kings whose decisions and prevarications should never be challenged. I personally do not hold this view, and I do not think anybody in this body does.

I have no ill feelings for Judge Sarokin personally, and I wish him much happiness in his retirement. But it should be pointed out that he served darned little time on the third circuit Court of Appeals, and will receive higher retirement because he went from the district court to the Third Circuit Court of Appeals. And we went through an awful situation as he was elevated to that court. Mr. President, but I do not wish him any harm, and I wish him happiness in his retirement. But what is far more important at this point is not Judge Sarokin's retirement but who will replace him.

The American people will decide this fall who will be our President, and along with that choice comes the choice of the President's judges. The choice this fall will be between judges who will be tough on crime and judges who are softer on crime, judges who will apply the law and not legislate from the bench, or judges like Lee Sarokin who have been activists from the day they got on the bench.

Mr. President, I just want to mention one other thing. This week there was the very important argument in the Supreme Court by the President's Solicitor——

I ask that we have order. This is very important.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Utah.

Mr. HATCH. This argument before the Supreme Court was made by the President's Solicitor General, who I know was pushed into this position by others who apparently have enough power in the Solicitor General's Office beneath him to force him into this untenable situation.

No sooner—in a little over a month—after enacting the antiterrorism bill, with clearly the most part of that bill being habeas corpus reform, the Solicitor General walks into the Supreme Court and undermines that very reform, with an argument that would create a tremendous loophole, by hoping to convince the Supreme Court that they can ignore Marbury versus Madison and grant themselves jurisdiction that the Constitution does not grant and neither does the Congress. And, frankly, I could not believe it when I heard the Solicitor General make the argument that he did. I feel badly that I did not argue for our side in Court but I just did not want to have it look like I was grandstanding, or something like that.

The fact of the matter is that, if the Solicitor General's position is accepted, there will be a direct appeal to the Supreme Court mentioned nowhere in the Constitution, nowhere in statutory law because we are not allowed under Marbury versus Madison to expand the jurisdiction of the Supreme Court, or to detract from it. I will surprised if the Supreme Court grants that. But there was not an effective argument in my opinion against that position in the Supreme Court even though the law is pretty clear. The Constitution is clear. That Marbury versus Madison, the all-time most important, or at least one of the most important, Supreme Court cases is pretty clear. The result and the effect of that argument by the Solicitor General was that the Solicitor General sided with the convicted murderer in that case, who is now 13 years in prison after he was condemned to death but through multiple habeas corpus appeals to the Court, and there is basically no reason to believe that he is not the murderer, has avoided his sentence. Naturally, every one of these murderers claim—not every one, but a great many of them claim—they never did it. But the facts bespeak otherwise.

It was really something to watch the Solicitor General in there arguing on behalf of the convicted murderer who has 13 years on death row and multiple appeals. This is precisely what the President told me he wanted to end, and I did end it while still protecting their constitutional rights and giving them a direct appeal all the way up to through the State courts, a collateral habeas corpus appeal all the way up through the States courts, both of them all the way to the Supreme Court, and then a full right to take a separate Federal habeas corpus appeal all the way up to the Supreme Court, and then a protective right by a three-judge circuit court of appeals panel, if they have newly discovered evidence that could not otherwise have been recently uncovered, or there is some retroactive opinion of the court that applies. That is what bothers me.

So who picks these judges and who picks these Solicitor Generals? Who picks leadership in anticrime in this next Presidential race is extremely important. I do not think you need a better example than Lee Sarokin in this country today to show the importance of that particular choice to all Americans, nor do I think you need a better prime example than the Supreme Court argument of this administration and this Solicitor General before the Supreme Court this last week.

Mr. President, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

UNANIMOUS CONSENT REQUESTS—H.R. 3103 AND S. 1028

Mr. LOTT. Mr. President, I seek recognition to propound a unanimous-consent request momentarily. I know the distinguished Democratic leader is

here to respond. But I would like to just make some comments about why we are doing this now and what we hope for.

First of all, this is with regard to the health insurance reform legislation that passed the Senate by a vote of 100 to 0 on May 23, 2 full weeks ago today, and yet we have not been able to appoint conferees. Now, we all know that conference activities have been underway. There has been communication from both sides of the aisle, on both sides of the Capitol, and I had the impression yesterday morning that great progress had been made, that maybe we were close to an agreement on what would be in the conference report that would come out with regard to health insurance reform.

But as a matter of fact, apparently that agreement has not been reached. I understand that perhaps the Senator from Massachusetts has had a press conference within the last couple of hours being very critical of what has transpired with regard to this issue, particularly as it applies to the medical savings accounts.

Conferences are where people give and take. Quite often you get part of what you wanted, not all of what you wanted, but I had the impression that concessions had been made or indicated from the Senate that were positive and from the House and that we were very close to an agreement, and yet it does not seem to have occurred. Yet we still have not been able to get an agreement to actually have conferees appointed.

I do not understand that. I thought that once you pass a bill, you communicate across the aisle and you appoint conferees, go to conference, and they do the job. What has been suggested by the distinguished majority leader is we have conferees appointed, appropriate ones after consultation with the Democratic leadership, from the Education and Labor Committee and from the Finance Committee, all those general matters within the jurisdiction of the Finance Committee, and also from the Judiciary Committee since in the House they were going to have Judiciary Committee conferees with regard to medical malpractice.

If we could surely agree on conferees and get the real conference underway, I think everybody would like to see this issue agreed upon and resolved here in the next few days, hopefully.

So I ask unanimous consent, Mr. President, that notwithstanding the receipt of the message from the House regarding the appointment of conferees with respect to H.R. 3103, the Senate insist on its amendment to H.R. 3103, the Senate agree to a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. Is there objection.

Mr. DASCHLE. Reserving the right to object, I share the view expressed by the distinguished majority whip. There is no reason why we cannot resolve this matter. It was passed 100 to 0 on a bipartisan basis. Unanimously, this Senate said this legislation should be passed.

Mr. President, that was over a month ago now. There is no reason why in a month's time we could not have negotiated successfully the differences with the House. That is all this has been about, finding a way with which to resolve our differences.

Now, I might tell the distinguished majority whip that it has been of increasing concern to us that as these negotiations are going on, Democrats have been excluded from the real conferencing and the negotiations as they have gone on, and we do not understand why that would have to be, why we cannot have bipartisan cooperation and consideration of the problems that we are facing in both versions of the bill.

To be locked out, in our view, is unacceptable. We also recognize—and I know that the distinguished majority whip recognizes as well—that as you negotiate a conference with representatives for that conference, there has to be some accommodation on both sides of the aisle with regard to the numerical representation as well as the committee representation. He knows very well that in this case that has not been done. So we have not been able to come to some resolution with regard to this representation in the conference and so have been relegated to these negotiations that have been ongoing.

We were told as late as yesterday that progress was being made, and it was for that reason I withheld offering a unanimous-consent agreement that I, frankly, believe we ought to put on record. There is no reason why we cannot restate the unanimity which we feel about this legislation.

So having reserved the right to object, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1028, the Kassebaum-Kennedy health care portability bill, the language of which was passed by the Senate on April 23 by a unanimous vote, that the bill be read a third time and passed, and the motion to reconsider be laid on the table.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. I object to that request.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. If I could respond before Senator DASCHLE has an opportunity to respond to my unanimous consent, I have two points.

First, I want the record to be clear that a vote actually did occur on April 23, not May 23, so it has been well over a month since that action occurred.

As to having Democrats involved in the negotiations, I believe that they have been involved in talking back and forth, but the reason why they have not been formally involved is because we have not been able to get an agreement to appoint conferees. That is the way it works. You appoint conferees and the conferees meet, Republicans, Democrats, House, Senate. That is the way to get an active, direct, normal, formal conference underway. Let us appoint conferees. Let them meet this afternoon and pass this thing out and then we can move it forward. We would love to have Senator KENNEDY, Senator PELL, Senator MOYNIHAN, Senator BIDEN, or a different mix of Democrats on behalf of the Senate in a formal conference meeting with the House, and that is why we are trying to seek this unanimous-consent request at this time.

Mr. DASCHLE. Mr. President, again——

The PRESIDING OFFICER. The Chair understands that objection was heard to the unanimous-consent request of the minority leader. Unanimous consent was not agreed to on the request of the Senator from Mississippi.

Mr. DASCHLE. Mr. President, again reserving the right to object, I yielded for purposes of response on the part of the distinguished majority whip. But let me simply say that, unfortunately, it used to be the case that Republicans and Democrats got together formally and resolved their differences in conference agreements. I would only cite as the most recent illustration of how that is no longer the case the budget agreement. To my knowledge, not one meeting was held where Democrats were included in that conference, not one. So I hope we can get back to the time when Democrats and Republicans can formally sit down and work through all of these differences. That, in part, is what this is all about. We want to get an agreement. We will continue to offer the original language to whatever legislation may be offered in our determination to get resolution of this issue. But we certainly cannot agree under these circumstances to the request propounded by the majority at this time, so I object.

The PRESIDING OFFICER. The Chair is unclear. Does the minority leader object?

Mr. DASCHLE. I indicated I did object.

Mr. LOTT. Mr. President, if I could respond to correct one thing that the Senator said. As a matter of fact, no agreement has been reached on the budget resolution conference report, and, in fact, I believe there was a meeting of the conferees at 3 o'clock on Tuesday of this week. I assume there will be other meetings of the conferees. I am not a conferee on that budget conference, but I do know that they met, I believe, for about an hour or hour and a half on Tuesday of this week. We hope they will meet again soon and get an agreement because we would like very much, as I know the Senator, the Democratic leader, would, to have that budget resolution conference report so we can get on with appropriations bills.

We hope to have it at the earliest opportunity next week, if not get an agreement today.

I yield the floor. I thank the Chair.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

DEMOCRATS CONTINUE TO BLOCK HEALTH CARE REFORM

Mr. GRAMM. Mr. President, I want to talk about this issue of naming conferees, and about the health care bill itself. I know many people think that when we have these little confrontations it is just partisanship and that it does not mean anything, but I wanted today to take a little time to talk about the real issue here and explain what it really means.

Let me begin by noting that the Senate passed a bill 44 days ago which would make health insurance permanent and portable, and which set out a procedure to try to make it easier for people to get and keep good private health insurance. It was this little bill right here.

Now, 44 days ago, the distinguished majority leader, Senator DOLE, tried to appoint conferees to work out the differences between our health care reform bill and the health care reform bill that passed the House of Representatives, so that both Houses of Congress could then bring up and pass a final bill.

For 44 days, Senator KENNEDY has objected, and for 44 days he has denied working Americans the following provisions: No 1, an 80-percent deduction for health insurance premiums that are paid by the self-employed. This is a provision which is contained in the bill that we passed thanks to an amendment that was written and offered by Senator DOLE; No 2, the deductibility of long-term health insurance premiums; No 3, the ability of people with terminal illnesses, with the certification of a physician, to go ahead and collect their life insurance—a very important provision for people who have AIDS; No 4, State-sponsored high risk insurance pools—that will help low-income people who have high medical risks get health insurance in the State they reside in; and, finally, No 5, the ability to, on a penalty-free basis, draw money out of your IRA's, your individual retirement accounts, if you have high health insurance bills. These are things that have been agreed to and these are things that, with certainty, would happen if we passed this bill. But, for 44 days, the Democrats have prevented us from going to conference and working out an agreement that would let us pass this bill.

What does 80 percent deductibility of insurance premiums for the self-employed really mean? In the last year for which figures are available, there were roughly 3 million Americans who had insurance through self-employment. They were allowed a 25 percent tax deduction on the cost of that health insurance, even though, if they worked for somebody else, it would be 100 percent deductible. So the 3 million Americans who work for themselves had to pay 75 percent of their insurance premium with after-tax dollars because the Tax Code discriminates against the self-employed. Again, in the last year for which figures are available, the average self-employed American, in buying health insurance, got a deduction of $713. If we had passed this bill 44 days ago when we had a chance to go to conference and work out our differences, the average American who works for himself would ultimately be able to deduct $2,283 for the payment of private health insurance premiums. In other words, for over a month now, we have delayed over $1,500 of savings to every self-employed worker in America.

In addition, we now have in America over $1 trillion in individual retirement accounts or other forms of tax shelter. By allowing that money to be used to pay health insurance costs, when those costs exceed 7.5 percent of your gross adjusted income, we would be liberating $1 trillion of assets that could be used to help working Americans at a time when not only has a rainy day arrived, but it is pouring cats and dogs as a result of exploding health insurance costs. Yet we have not passed any of these provisions because the Democrats have objected to naming conferees. Well, why do we have a filibuster of a bill that the Democrats, in huge numbers, support? Why is this happening? That is the point I want to address right now.

The Democrats say they are filibustering this bill because they are opposed to medical savings accounts. They are fearful that medical savings accounts will be in the final bill since the House of Representatives overwhelmingly adopted a provision that would permit Americans, who freely choose to set up medical savings accounts, to do so on a tax exempt basis—and they object to this.

It is very interesting to note that this objection is a rather new phenomenon. In fact, some of the objectors have, in the past, been some of the strongest proponents of medical savings accounts. Let me quote Senator DASCHLE, the Democratic leader, who introduced a bill—which contained medical savings accounts—with Senator NUNN, Senator BREAUX, Senator BOREN, and others. In a statement related to that bill here is what he said: ''We have introduced a bill * * * which would allow employers to provide their employees with an annual allowance in a 'medical care savings account' to pay for routine health care needs.'' That was his position 2 years ago.

Let me quote the Democratic leader in the House, DICK GEPHARDT, who also had a bill which contained medical savings accounts. He said, talking about medical savings accounts, ''It's very popular. A lot of people like that option and I think it will be in the final bill.'' That is the final health care bill. ''I think it is a great option.'' This was DICK GEPHARDT'S position on medical savings accounts just 2 years ago.

Even the Kassebaum-Kennedy bill endorses the idea of medical savings accounts. So why the change of heart? What has happened? The Democrats say they discovered that medical savings accounts only help rich people.

Well, let me read you some quotes from some of these supposedly rich people who have medical savings accounts. This is an allegedly rich person who is the political director of the United Mine Workers in Illinois. In writing to Senator SIMON he said:

> An amendment to the health care package has been offered to add a medical savings account provision. The United Mine Workers has a similar provision in our current contract that is anticipated to produce significant savings versus our previous insurance.

Let me read from another rich person who writes on behalf of medical savings accounts. This is a part-time bus driver from Danville, OH who writes:

> Today I would like to appeal to President Clinton to please support the medical savings account issue. Nearly 3 years ago we went to a medical savings account plan and it has been very helpful.

Why, all of a sudden, having introduced bills that provided for medical savings accounts—why, all of a sudden, are people like Senator DASCHLE and Minority Leader GEPHARDT and other Democrats in Congress now so adamantly opposed to medical savings accounts? Let me tell you my theory as to why, all of a sudden, Democrats who have been for medical savings accounts in the past are now so adamantly opposed to them. I think that the discovery they made is not that medical savings accounts are for rich people, but rather their discovery is that medical savings accounts give people freedom. They let people choose. They empower people. Republicans are not trying to force Americans to take medical savings accounts. We just want to allow them to do make a choice without discriminating against them in the Tax Code.

Our Democratic colleagues oppose letting Americans have that choice because they do not want Americans to choose their own health care. They want Government to choose. They claim they are for this little bill, but it is actually this big stack of bills that they support.

This is what they are for. This is what we have been debating over the last 2 years—the Clinton health care bill and all of its derivatives. Our Democratic colleagues know that to let people choose their own health care means that Government cannot choose it for them. The holding up of this bill and their new-found opposition to medical savings accounts shows one thing very clearly: the Democrats do not want families to choose, they want the Government to choose.

This little bill is not the health care bill they are for—this big stack of bills