

get this all worked out. And if we can, it would be really great. If we cannot, we will just go out and come back in the morning. I have had that on my mind all week anyway. So we can do that.

Mr. FORD. Would the Senator yield?

Mr. LOTT. I would be glad to.

Mr. FORD. I have no objection to the recess. But we do have a couple Senators that were on their way to make some remarks on our side. If you could withhold that or set it at the end of the statements by Senator KENNEDY and Senator WYDEN and maybe Senator BAUCUS, because those three would like to make some remarks. That way we would not be wasting the time.

Mr. LOTT. As long as there are Senators who would like to speak, obviously, we want to allow that. If those three are going to speak, we would probably want to have maybe some response on our side. But when we reach the point where Senators are not here speaking, instead of just keeping everybody here waiting, I would propose we recess then until 2:30. But at 2:30, regardless, I will move to get this underway.

#### MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

Mr. LOTT. When Senators have had their say, I will come back and ask that we stand in recess until 2:30. But we will wait on that.

Mr. FORD. With that understanding, Mr. President, I do not think anybody has any problem with that at all. I do have some colleagues that would like to make some remarks. And listening to the majority leader, you may have somebody that would like to come over and make some remarks too after these three Senators have on our side.

Mr. LOTT. We may eat up the time.

Mr. FORD. With the \$435 a page, or whatever it is, it costs to print the RECORD.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

#### HEALTH INSURANCE CONFERENCE REPORT

Mr. KENNEDY. Mr. President, I am very hopeful, and I know the American people are, that we will move ahead this afternoon on the conference report dealing with the Kassebaum-Kennedy bill. As we know, it was a year ago today that we passed that bill out of the Human Resources Committee. It languished for close to 9 months on the Senate calendar before it was considered. Then it was considered. And it has been several more months before we were able to get resolution of the principal items which were at issue,

the portability issue, the MSA issue and the other provisions in the legislation. And we saw a successful conclusion of those issues just some 2 days ago. All of us are very eager to get that measure down to the President of the United States.

However, I must say, a number of us were very surprised to find that our staffs, around 10:30 or 11 o'clock the night before last, after a number of us were assured that there were only technical corrections in the legislation, discovered that a special provision had been included into the act at page 76. That special provision, which no one knew about, was a patent extension and special treatment for a drug called Lodine which people take for arthritis. And now that is in the health care legislation that we all want to get to the President of the United States as soon as we can. But, this afternoon we are faced with this special interest provision being put into the whole proposal.

I just want to make it very clear that neither I nor do I understand any other Member of our side, and to the best of my knowledge on the other side, had any idea whatsoever that this special interest provision benefiting a single company had been included in the health care bill. It is a special interest provision for one particular company that has annual revenues from this one drug, Lodine, of some \$275 million.

The special interest provision gives that company 2 additional years of patent protection and other special benefits. As I understand it, in return, the company would have to pay \$10 million each year for a total of \$20 million to the Federal Government and pay the States so they do not have to pay for the increased costs due to the patent extension.

So the question is, Who pays? Well, the answer to that is, everyone else in America will pay more for Lodine. Every senior and every American who uses this arthritis drug will pay more because this special provision says no one else can compete with this drug for 2 more years. This provision eliminates competition and gives this company a monopoly, which means it can charge whatever it wants for its drug. Our seniors and everyone else will be paying the bill for this special interest provision.

The question is, then, How much more? How much more money will people have to pay? We know that generic competitors historically undercut the price of drugs like Lodine by 30 to 50 percent. That means that when a patent expires, other companies can make and sell inexpensive generic versions of the drug to compete. This provision means that there can be no competition for 2 more years and that means Americans will pay between \$80 to \$130 million more each year for this sweetheart deal.

Now, Mr. President, we all know that this sweetheart deal will cause all the other companies to come in here and ask for special favors also. This deal

for one drug will open the floodgates and will cost consumers hundreds and hundreds of millions of dollars.

Mr. President, the claim is made that we ought to go ahead with this special deal because their competitor has received an extension. That a competitor, called Daypro, got a deal stuck into the continuing resolution in April 1996, without any hearings, without any testimony, without any public review by the committees with jurisdictions, does not make this right. It is an old saying, but it is true: Two wrongs do not make a right. Because one snuck through, we cannot do it again and again and again.

It will not stop with Lodine. There are 12 drugs in this class on the market. You do this for Lodine, and the other 10 will be here tomorrow. In fact, in the last 2 weeks alone, three or four of those other companies have already been in this building asking for special treatment like Lodine. It will not stop here. The special interests will be banging at the door.

Mr. President, this is not really a new issue for some Members of the Senate because there was an effort to include a special deal for Lodine in June 1996, in the Defense authorization bill in the Senate as part of the Hatch-Specter GATT loophole closing legislation. But, then the lobbyists started lining up asking for special treatment for other drugs. They claimed that if Lodine gets special treatment, then they we would have to do it for others.

Then there was the Bliley-Dingell letter to the Defense conferees saying, "Take Lodine out". And the House Judiciary also objected to Lodine, and the conferees took Lodine out of the Defense authorization bill.

That didn't stop the Lodine special provision. The special deal for Lodine was put into the House agricultural appropriations bill in July. But, Senator PRYOR and Senator CHAFEE drafted a letter dated July 26, 1996 to Senator COCHRAN and Senator BUMPERS saying there was no merit and no basis for a Lodine extension. They said there were no hearings or deliberations of any kind in either the House or the Senate to determine if there were any public purpose served by granting this special extension. They urged that it be taken out of the agricultural appropriations bill.

At about the same time, the Senate health care conferees were appointed on July 25. And on July 30, the Republicans gave the Democrats a draft of this section of the health care bill. That draft was dated June 25, but it had no provision relating to the patent extension.

Then, at about the same time, the agriculture appropriations conferees took the special provision for Lodine out of the bill. That, I believe, was also on July 30.

Now, back to the health care bill. On July 31, there were extensive negotiations on both of the issues of portability and on the MSA issues.

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

Mr. KENNEDY. Mr. President, could I ask for 5 more minutes?

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

Mr. KENNEDY. Then at 6:30 that night, July 31, after we worked out the portability and the MSA, I remember the call from Senator KASSEBAUM saying that we only had about 10 more minutes to sign. And so this Senator signed on the basis of the representations of what I knew was in the bill and the representations that were made by the various staff and other Members who were familiar with the language. There was never any mention of any special interest provision for Lodine.

We had the press conference announcing the agreement around 8 p.m. that night.

Then, around 10:30 that night, the Democratic staff go to legislative counsel and see the administrative simplification section, which they were being shown for the very first time. And there it was. Stuck in the administrative simplification section was this special provision for Lodine. This is the first time that anyone had seen this provision. Indeed, it was the first time anyone had even heard about it in connection with the health care bill.

They thought they killed it in the Defense authorization. They thought they killed it in the agriculture appropriations bill. But, they didn't. No. It was snuck into the health care bill and no one knew it and the rest is history.

It is interesting that over in the House on August 1, there was a Democratic effort to recommit the bill due to the special patent provision and also because of the nonparity for mental health.

The vote to re-commit in the House was 224 to 198. I have heard from a number of my colleagues that if that motion had only dealt with the patent provision, it would have been rejected and returned to the conference.

Now, Senator LOTT's spokeswoman was quoted in today's CongressDaily. I know Senator LOTT would want to clear up the alleged quote in Congress Daily because it said that this special provision was added with full knowledge of the conferees and was done for fairness. He was either misquoted or wrong on that, because it was not done with the knowledge of the conferees. If it were done with the knowledge of some of the conferees, then I hope they will come over here and explain it. Explain who knew about it. Explain who didn't know about it. Explain why this special provision was slipped into the health care bill without our knowledge.

Now, it certainly was not done for fairness. It was slipped into the bill without telling anyone, because it is not fair, and it is not deserved. Now, Mr. President, I will not take the time now to go into all of the details, but I will draw the Senate's attention to the fact that we have been addressing these

kinds of issues for the last 20, 25 years. Because of the series of different requests during the 1970's and 1980's, the Senate and the Congress, in their wisdom, passed the Hatch-Waxman bill in 1984 to deal with issues of justice and fairness that perhaps arose under some circumstances due to the arbitrariness or termination of patent extensions. To avoid this very problem, that law was passed to treat all companies equally and fairly. That system has worked pretty well. As a matter of fact, Lodine itself has already gone through that process and it has already received a 2-year extension.

But it still claimed that it was treated unfairly by the FDA. It still claimed that the FDA delayed its approval and was unfairly denied years of patent protection. But, as everyone knows, the claim that the FDA delayed approval has no merit. Everyone knows this, because this claim was thoroughly reviewed in 1992 and 1993. In fact, the GAO did a full review and published a detailed report in April of 1993. The conclusions were unambiguous and firm: any delay was the company's fault, not the FDA.

I will conclude with this: In 1993, the GAO issued its report specifically about the Lodine patent. GAO concluded there was no basis for recommending a patent term extension. Lodine's approval was delayed because of the company's actions and for public health reasons. I have that GAO report right here. We will have a chance to get into it in greater detail, but for now let me tell you their fundamental conclusions:

(1) it is a "me-too" drug which provided no significant public health benefit or therapeutic breakthrough, which would justify expedited review (such as AIDS or cancer drugs);

(2) concerns about Lodine's carcinogenicity were raised both in Canada and the United States, which had to be resolved before the drug could be approved;

(3) FDA found that the Lodine submission was "piecemeal, voluminous, disorganized and based on flawed clinical studies."

(4) the Lodine submission to FDA did not contain "enough data to prove efficacy until September 1989"—almost 7 years after the submission was made to FDA.

It goes on and on. Every single claim made by the company was investigated, reviewed and rejected on the merits. That is why this special interest provision keeps being slipped in under cover of darkness. It can't stand the light of day. There is no merit or basis for special treatment. Indeed, the facts show that this particular drug and this company was already treated fairly and appropriately. Under the rules that everyone else has to abide by, Lodine was treated right. It should have to play by the same rules as its competitors and everyone else.

Mr. President, I had hoped this special interest provision would not be included. It is not the way to do business. It is a special interest provision that was added without the knowledge of the members of the conference. It is bad policy.

Furthermore, it will result in the fact that millions of senior citizens will pay an unwarranted, unjustified additional amount for their prescription drugs because of one particular drug company which refused to follow the rules in terms of going through public hearings, public notice, and to give consumers a right to speak. It is absolutely wrong, Mr. President.

I hope we will have an opportunity to address this more, then move very quickly to the final consideration of the very important health care bill which we have reached resolution on. I see no other reason, if that unjustified special provision was resolved, that we could not resolve the conference report in an hour, or even less, so that it could be on its way to the President of the United States.

But, before we can do that, this special interest slipped into the health care bill will have to be examined. The American consumers deserve better than this type of shabby treatment.

The PRESIDING OFFICER (Mr. KYL). The Senator from Vermont.

#### MOLLIE BEATTIE REMEMBERED

Mr. LEAHY. I will be very brief, Mr. President. A few weeks ago, one of Vermont's most noted and valued citizens, Mollie Beattie, died. Much was said on the floor of the Senate about her. Much was said in Vermont at her memorial service and again at the Department of Interior when the Secretary of Interior, as well as the Vice President, her husband and others spoke. Much also was written in Vermont.

I noted a commentary by Jim Wilkinson in one of our Vermont newspapers about Mollie Beattie. Jim Wilkinson is one of those quintessential Vermonters who represents the best values of our State. I have known him for decades, both in his role as the commissioner of Vermont Department of Forest, Parks and Recreation, and more recently as the consulting forester for the tree farm my wife and I have in Middlesex, VT. He is a man of great depth, great honesty, and, frankly, great wisdom.

I ask unanimous consent that what he had to say about Mollie Beattie, reported in the Rutland Daily Herald, be printed in the RECORD.

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

[From the Rutland Daily Herald, July 23, 1996]

#### MOLLIE BEATTIE REMEMBERED

(By Jim Wilkinson)

Webster defines "memoir" as "a report on an event of significance." This memoir is a personal observation on the life of Mollie Beattie, an event of great significance.

Mollie has been proclaimed as a scholar, a forester, a writer, a philosopher—all that and more. She was known as a friend, a public servant, a leader. In all of these roles Mollie's time with us was lived to the fullest, with vitality, commitment, and serenity.

Others have written or spoken of her career in public service to Vermont and to the