

later that their assets exceeded government allowances for Supplemental Security Income.

With help from an attorney and Rep. Duncan Hunter, R-El Cajon, the Hauers kept the checks coming while they appealed. Finally, in April, they solved the problem by selling the \$600,000 Montana home to a Vista couple for \$225,000.

Still, making ends meet is a struggle. The payment on the East County home is \$3,000 a month, groceries \$2,000. The family goes through three loaves of bread a day, two gallons of milk and two boxes of cereal.

Other changes have occurred. The Hauers have re-established contact with an adult son who was living on the streets in San Diego a year ago. They say he's in an apartment now, doing fine.

Chuck Hauer, 61, quit his part-time job because of high blood pressure. He gets a small pension from General Tire and Rubber in Akron, Ohio, where he worked until 1982 as a quality-control inspector.

Penny, who discloses her age to no one, has resumed volunteer work she gave up nine years ago when the family moved from Ohio to Montana. From her bedroom, she makes calls for a Toledo agency, Adopt America Network, trying to match disabled children with families who will take them.

In three-ring binders, she has thumbnail descriptions of hundreds of kids and potential adoptive families in the agency's nationwide system. She gets new ones in every Monday's mail—two to five families, 10 to 20 children.

"In Los Angeles County (alone), each case-worker has 100 kids. They don't have time to make the matches," she said. "Somebody's got to do it."

Although there are never enough families, Penny Hauer is determined to make a difference. She tells excitedly of hooking up an Ohio couple just last week with three siblings, ages 2 to 4, in Escondido.

"I'm always looking," she said. "I want these kids to have a home."

The Hauers' own story dates to the mid-'70s, when they took in Charity April, a tot with cerebral palsy. The couple, then with four biological kids of their own, fell in love with the foster child and realized there were many more like her in need.

"We just decided to start adopting—not to adopt 35, but that's just what's transpired over the years," Penny Hauer said. "One takes all your undivided attention. When you have a group of children, they interact with each other."

Everyone has chores: Charity, 24, changes diapers for seven incontinent siblings. Cristy, 21, helps cook. Chet, 18, takes out the trash.

And the family may be growing. The Hauers have applied to adopt four more disabled orphans.

"I think when they carry me out of the house and I'm gone and dead, there's going to be somebody wrapped in my arms, because that's just the way I am," Penny Hauer said.

Today, the Hauers will squeeze some extra seats up to their 30-foot table—actually four oak tables stuck end to end.

After offering to provide Thanksgiving dinner to any armed forces member with no place to go, they learned Tuesday that they'll be joined by a mother and three young children whose Navy husband and father is away.

"It's all about sharing," said Penny Hauer. "I hope they like my cooking."

Foothills Republican Women's Club President Dawn Sebaugh, whose group adopted the Hauers last Christmas, has become a year-round helper and friend.

"It's just amazing," she said. "You wonder how someone could take care of, love and treat these children so well."

Sebaugh said her group will be helping the family over the holidays again this year.

"We will make sure Santa's there for Christmas," she said. "I know they could use a couple of extra bedrooms. I don't know if we can do anything (about that), but we're going to try."

Someone else who has fallen for the Hauers is Robert Stein of New York. An HBO producer of in-house promotional videos, he saw Penny Hauer's brief appearance on the "Rosie O'Donnell" show in February and was deeply moved.

Since then, Stein has spent several days with the family over repeated visits, filming a documentary at his own expense that he intends to pitch to his cable network.

"I was truly impressed witnessing these kids. They really do have a strong sense of love for each other," he said.

Stein said the Hauers' story could open more eyes and hearts to the disabled.

"People see disabled or handicapped kids or adults in the street, and a lot of times people look down . . . or write them off as people they can't connect with," he said. "These people have been very selfless as far as welcoming kids who may not have had a family life."

"They've really nurtured kids who may have been forgotten in the system, and they've really blossomed."

Ms. LANDRIEU. Obviously, there are many great things we can do in this Congress to promote adoption. Many of them have already been accomplished. However, there is much more that should be done, beginning with acknowledging the great work of everyone who has worked on this issue in America and around the world. Finally, I am delighted that we are taking the necessary time today to bring this important issue to the attention of all of our colleagues.

I yield back the remainder of our time and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HAGEL). The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. GRAHAM. 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. GRAHAM. Mr. President, I understand we are in morning business with a 10-minute restriction on length of comments.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAHAM. I ask unanimous consent to be able to speak for 20 minutes.

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

THREE BRANCHES OF GOVERNMENT

Mr. GRAHAM. Mr. President, I wish to speak on an issue which has already been addressed by several of our colleagues earlier in the week. Initially, I was reluctant to discuss this matter for fear of contributing to a charge of politicization of an issue which, in my judgment, should not be thought of as political but, rather, one to be judged and decided in the finest traditions of

our Nation, the relationship of each of the branches of Government carrying out their appropriate responsibilities.

The reticence I had to discuss this issue was overcome when I heard some of the comments made about our Justice Department and about our Attorney General relative to the decision made to file civil claims on behalf of the Federal Government and the citizens of the United States against the tobacco industry.

The purpose of my remarks this afternoon is not to rebut comments made elsewhere; rather, it is my purpose to remind our colleagues of the bedrock principles upon which this body, upon which our Federal Government operates, the rule of law and the separation of powers.

The level of rhetoric on the question of whether the Federal Government should have initiated civil litigation against the tobacco industry has been very high. The level of analysis, unfortunately, in my opinion, has been quite shallow. In their haste to spring to the tobacco industry's defense and to, once again, heap partisan abuse upon the Attorney General and the Justice Department, some Members of Congress have disregarded the very nature of our system of government.

I have heard it said the Justice Department suit violates both separation of powers and the rule of law. In my opinion, these accusations turn the structure of our Government completely on its head. Nearly 200 years ago, Chief Justice John Marshall explained the powers of our coordinate branches of Government. In *Marbury v. Madison*, the seminal decision which established the concept of judicial review, the Chief Justice wrote: The powers of the legislature are defined and limited and that those limits not be mistaken or forgotten, the Constitution is written.

The Chief Justice went on to say it is emphatically the province and duty of the judicial department to say what the law is.

For the last 200 years, the American people have understood the respective roles of the three branches of Government. As the national legislature, our duty as Congress is to find and limit it to the role of making law. It is the executive branch's role, in part through the Justice Department, to enforce that law. It is the Judiciary's role to interpret the law. Each branch of Government must be left to do its work without interference from the other branches.

We in Congress have already done our job. We have made the laws which the Justice Department now seeks to enforce. Whether the Justice Department ultimately prevails is left to a third branch of Government, the judiciary. The only threat to the rule of law in filing this litigation on behalf of the American people against the tobacco industry is posed by those who seek to step beyond their proper relationship and usurp the power granted by the

Constitution to other branches of Government. It is neither wise nor right for members in the legislature to attempt to tell the executive how to enforce the laws or to tell the courts how to interpret the laws. If we practice jurisprudence by press release, we become lawmakers, law enforcers, law judges. If we have learned anything at the end of this millennium, it is that such an aggregation of power is the antithesis of the rule of law and is, instead, the imposition of tyranny.

Throughout the world—from East Timor to Kosovo to Cuba—we encourage other countries to follow the rule of law. We must do no less here. We have the greatest judicial system in the world. It resolves disputes based on evidence not rhetoric. Let us allow our court system to adjudicate this dispute without congressional interference.

Undoubtedly there have been instances when individual Members, if not a majority of the Senate, have questioned the wisdom of lawsuits brought by the Justice Department.

When powerful industries violate federal law, it is not uncommon for them to seek congressional interference. When individuals or groups have used their power and privilege to dominate others, and that power was challenged by the law, they have shrilled—"foul."

Many disagreed when President Theodore Roosevelt's Justice Department sued to break up Standard Oil. Similar complaints were heard when President Reagan's Justice Department sued AT&T.

And we can all remember the outcry in some quarters in the 1950's and 1960's when the Justice Department sought to enforce civil rights guarantees.

While some influential members might have advocated congressional intervention, in none of those cases did the Congress step in to attempt to tell the Justice Department whom it can or cannot sue. We must not do that now.

Some have asked why Congress was not consulted prior to this suit being filed. The questioners appear to have forgotten much of what has happened in the last year.

Setting aside the fact that the Justice Department has no obligation to ask Congress for permission to enforce the law, Congress was well aware this litigation was under consideration.

In his State of the Union address, the President discussed the possibility of this tobacco suit, by announcing that he had asked the Justice Department to prepare a litigation plan against the tobacco industry. Specifically, the President said:

So tonight I announce that the Justice Department is preparing a litigation plan to take the tobacco companies to court—and with the funds we recover, to strengthen Medicare.

It would have been hard to be clearer. Congress also considered the potential for a federal tobacco suit when it protected the states' tobacco settlements from federal incursion. In the budget resolution, passed on March 25,

1999, I offered a sense-of-the-Senate amendment which stated that the proceeds of a successful federal lawsuit should be used to shore up the Medicare Trust Fund and help to establish a prescription drug benefit. That amendment passed without dissent.

In March of this year, during debate of the budget resolution, the Senate defeated an amendment offered by Senators SPECTER and HARKIN to place strings on the states' tobacco settlements. Several Members of this body, including myself, stated that if the federal government believed it had claims against the tobacco industry, the Justice Department was free to bring those claims but that the Federal Government should not attempt to recoup State settlement proceeds. The matter was discussed yet again when the Commerce, Justice, and State Appropriations Subcommittee attempted to impede the Justice Department's ability to pursue litigation against the tobacco industry. Not only was the offensive report language effectively removed through a colloquy, the chairman of the subcommittee expressly acknowledged that:

Nothing in the bill or the report language prohibits the Department from using generally appropriated funds, including funds from the Fees and Expenses of Witnesses Account, to pursue this litigation if the Department concludes such litigation has merit under existing law.

Quite obviously, the Justice Department has reached the very conclusion discussed on the floor of the Senate just a few months ago.

Surely it is absurd to suggest that the Justice Department somehow blind-sided Congress with the announcement of this lawsuit. But again, these facts beg the question. The Justice Department does not need my permission or your permission, or the permission of anyone else in this body to do its job, which is to enforce the law. Conversely, if we attempt to prevent the Justice Department from doing its job, we are engaging in obstruction of justice. Others have questioned the motivation for bringing this suit. I believe the motivation for the Attorney General's decision is similar to that of the attorneys general in many of our states: to enforce the law—and by doing so—protect the American people and particularly the children of America.

The suit seeks to end the cycle of addiction to nicotine, an addiction created in part by false advertising and advertising targeting the youth of our country. It also seeks to recompense taxpayers for the billions of dollars this addiction has cost them—the taxpayers of America. These are motivations which should be celebrated, not ridiculed.

The merits of this case rightfully will be determined in a court of law—not in this body, not in the Congress. But since some of my colleagues have seen fit to put on their own imaginary black robes and pretend to judge this case, I

would like to offer a few observations of my own.

It has been argued that the civil RICO statute does not apply in this case because tobacco is a legal product. But this argument ignores the claims made by the Justice Department.

The Justice Department does not allege that tobacco itself is illegal. Nor does it suggest that the tobacco industry broke the law by selling or marketing tobacco products to adults.

Instead, the Justice Department argues that tobacco companies violated the civil RICO statute—a Federal law, of course, enacted by Congress—by conspiring to illegally market their cigarettes to children and by wilfully withholding critical information from the public and the Government.

The tobacco companies have known for years what we are just beginning to learn. If they don't hook you early, they'll never hook you. And if they never hook you, their business dies. It's as simple as that. Tobacco relies by necessity on addicting our children.

According to the Centers for Disease Control, 89 percent of all smokers begin smoking before age 18. So, Mr. President, does it surprise us that the tobacco industry has spent millions of dollars each year to addict our children? It certainly should not.

But whether it surprises us or not, we have an obligation to do something about it. In this case, we should simply let the Justice Department enforce the laws that we have passed.

As documents introduced in state court actions have demonstrated, some of the marketing efforts of these companies have been directed at children as young as 10 years old.

The fact that tobacco is legal for adults does not give these companies the right to market their products illegally to children or to misrepresent or conceal information. These allegations, if proven, will constitute a violation of the RICO statute.

I am even more disturbed by another argument made by the pro-tobacco forces. They argue that even if the Justice Department can prove the tobacco companies lied and illegally marketed their products, the Federal Government has suffered no damages because tobacco use imposes no net cost to the taxpayer.

Let me restate that: the Federal Government has suffered no damages because tobacco use imposes no net cost to the taxpayer.

Let us be clear on what is being argued here. Big Tobacco says that the taxpayers incur no increased costs because tobacco kills people prematurely. Therefore, the industry argues that the taxpayers save money by not having to pay out Social Security or Medicare funds to Americans whose lives are cut short by tobacco before they reach 65.

I imagine there might be some who would congratulate the tobacco industry for saving us all this money by killing our fellow American citizens before

they become a burden. I, for one, and I am confident the vast majority of Americans, would much rather spend money on Social Security and Medicare than have millions of our fellow citizens die a slow, a painful, and a premature death.

Along with being a ghoulish and despicable argument, the industry's twisted logic that it has imposed no net cost on the American taxpayer has also been properly rejected on public policy grounds.

In January of 1998, the trial court in the Minnesota State suit against the tobacco industry upheld the motion of the State of Minnesota for summary judgment, effectively stating that the State of Minnesota had established its case with no further evidence required.

In granting this motion, Judge Fitzpatrick ruled the tobacco industry defendants could not use the fact that they killed people prematurely to their advantage in defending against the suit.

Predictably, the friends of tobacco also make another slippery slope argument. If the Justice Department can sue tobacco companies, they say, what other industries will not be safe? Will fast food or beef or dairy industries be the next in line?

This argument is truly offensive. It is an affront to me personally and should be an affront to all legitimate owners of businesses, large and small, who contribute to this Nation, instead of destroying its health. My family happens to have been in the dairy business for almost 70 years. I take great offense at the comparison between the tobacco industry and the dairy industry. Neither the dairy industry, the beef industry, fast food industry, nor any other is comparable to tobacco. The tobacco industry is unique. Only the tobacco industry has stonewalled and lied to the American public and the American Government for half a century about the known addictive nature of its products. If anyone in this body wants to argue that the dairy or beef industries are analogous to big tobacco, then I invite them to come down to the Senate floor and let's have that debate. Better yet, go to Florida or Wisconsin and tell cattle and dairy farmers they should be treated like big tobacco, an industry which depends on destroying the health of our children in order to succeed.

Let's spend a moment talking about those children. When all the legal arguments and all the political rhetoric fall away, our children remain. They, not lawsuits, not politicians, are our most important concern. It is our children who have been the targets of a predatory effort by the tobacco industry to entice them into an addiction which will eventually kill them.

We also know that early cigarette habits are directly related to other drug use. A 1994 Surgeon General report showed that cigarettes are a gateway drug, a significant risk factor to increased incidents of alcohol and illicit drug use.

This report highlighted the relationship of teenage smoking as a precursor to the use of alcohol and drugs, including recent data from the National Institute on Drug and Alcohol Abuse's "Monitoring the Future" project which showed that 33 percent of those surveyed admitted to starting drinking at the same time they started the use of tobacco. This same survey also indicated that 23 percent of the respondents began using both cigarettes and marijuana in the same year.

Importantly, 65 percent of the respondents smoked cigarettes before they used marijuana. This relationship was more pronounced for cocaine: 98 percent of individuals who used cocaine first smoked cigarettes. Putting an end to the tobacco company's illegal marketing efforts toward our Nation's youth will reduce children's smoking. This, in turn, will go a long way to helping combat the use of other illegal drugs.

I know the Justice Department's suit is not a panacea. It will take a combination of litigation and legislation to solve this problem.

A court, for instance, cannot grant enhanced Food and Drug Administration authority to classify nicotine as a drug and cigarettes as a drug-delivery device, a powerful tool to prevent the tobacco industry from manipulating the product to addict even more people. Only Congress can give the Food and Drug Administration that authority.

Should Congress find the tobacco industry responsible for the high rate of youth smoking, Congress may have to impose penalties on big tobacco based on the industry's failure to meet statutorily defined youth smoking reduction targets. A court cannot bind future entrants into the tobacco market to marketing and advertising restrictions which were entered into by the previous participants in the tobacco industry through a consent decree. That may also require congressional involvement.

I stand ready to work with my colleagues on all of these and other necessary legislative issues, but this suit is, however, an important, a useful step in enforcing the rule of law. It is important in protecting our children and our grandchildren.

I am proud to call Janet Reno a friend. As an American, I applaud her for her hard work, for her tenacity, and courage in the face of fierce partisan opposition. I say thank you, Madam Attorney General, on behalf of all of America's citizens.

I thank the Chair. I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I believe the combined leadership has come to the floor and we should give them our undivided attention at this time because I am sure they have something very important to advise the Senate. I will refrain from recognition and defer to my senior colleagues.

The PRESIDING OFFICER. The Senate majority leader.

Mr. LOTT. Mr. President, I thank the distinguished Senator from Alaska for allowing us to enter into some unanimous consent agreements and some colloquy that we have been working on for quite some time. I understand the Senator from Alaska may want to continue after we complete this.

Mr. MURKOWSKI. I thank the majority leader, but I understand Senator AKAKA has been waiting longer than I, so I will defer to Senator AKAKA following the leadership pronouncements.

UNANIMOUS CONSENT AGREEMENTS—EXECUTIVE CALENDAR

Mr. LOTT. As in executive session, I ask unanimous consent that on Monday, October 4, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session to consider the following nomination, and it be considered under the following limitations: Executive Calendar No. 172, Ronnie White to be District Judge for the Eastern District of Missouri, under a 1-hour time limitation divided as follows: 45 minutes equally divided between the chairman and ranking member; 15 minutes under the control of Senator ASHCROFT.

I further ask consent that following that debate, the Senate then begin debate en bloc on the nominations of Calendar No. 215, Ted Stewart, and Calendar No. 209, Raymond Fisher.

I further ask consent that following the granting of this consent, the nominations of Calendar Nos. 213 and 214 be immediately confirmed, the motion to reconsider be laid upon the table, the President be immediately notified, and the Senate resume legislative session.

I further ask consent that following the debate on Monday on the three nominations, the Senate resume legislative session.

I finally ask consent that at 2:15 p.m. on Tuesday, October 5, the Senate resume executive session and proceed to consecutive votes, first on the nomination of Ronnie White, to be followed by a vote on the nomination of Ted Stewart, to be followed by a vote on the nomination of Raymond Fisher. I also ask consent that following the votes, again the President be notified of the Senate's action and the Senate then resume legislative session.

Before the Chair rules, I yield to the Democratic leader for his comments and an appropriate response from me.

The PRESIDING OFFICER. The Senate minority leader.

Mr. DASCHLE. I appreciate the majority leader's effort to try to move these nominations along. Before I make some comment, let me ask the majority leader what his intentions are with regard to Marsha Berzon, the nominee to be the United States Circuit Judge for the Ninth Circuit, as