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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, all-powerful source of true spiritual power, authentic leadership power, and lasting inspirational power, we come to You to be empowered by Your indwelling spirit. Forgive us for our desire for the facsimiles of real power. We struggle for power, play power games, and barter for power within our parties and between our parties. Often we manipulate with quid pro quo. Sometimes we use people as things instead of using things and loving people. Help us to be so sure of Your love and so secure in Your power that we will be able to live honest, open, nonmanipulative lives.

You have told us that the truth sets us free. We commit ourselves to search for Your truth about the issues that confront us, debate the truth as You have revealed it to us, and speak the truth in love. May this be a day in which the Senate exemplifies to America and to the world the unity of those who may differ in particulars but are never divided on essential issues.

Today we thank You for the distinguished leadership of Senator TED STEVENS. Yesterday he cast his 12,000th vote as a U.S. Senator. Now we cast our votes of affirmation and appreciation for his strong and decisive leadership. Thank You for his faith in You and for his unswerving patriotism to our Nation. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. Senator McCAIN is recognized.
Mr. McCAIN. I thank the Chair.

SCHEDULE

Mr. McCAIN. Mr. President, today the Senate will immediately resume consideration of the Y2K legislation with the intention of completing action on that bill this afternoon.

Following the debate of S. 96, the Senate may begin consideration of the State Department authorization bill, any appropriations bills available for action, or any other legislative or executive items on the calendar. Therefore, Senators can expect votes throughout today's session of the Senate.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. CRAPO). Under the previous order, leadership time is reserved.

Y2K ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 96, which the clerk will report.

The legislative assistant read as follows:

A bill (S. 96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a two-digit expression of the year's date.

Pending:

McCain amendment No. 608, in the nature of a substitute.

Bennett (for Murkowski) amendment No. 612, to require manufacturers receiving notice of a Y2K failure to give priority to notices that involve health and safety related failures.

Mr. McCAIN. Mr. President, I am pleased with the progress we have made thus far on this bill. We have limited the number of remaining amendments, and I am hopeful we will be able to reach agreement as to time agreements on the remaining amendments so we can conclude consideration of this important legislation.

I am also pleased we have turned back two attempts to emasculate the legislation. Those critical votes encouraged me that the Senate will be able to pass meaningful and effective legislation regarding the top priority issue for the broadest possible cross-section of the Nation's economy.

The ongoing fight between the welfare of the Nation's economy and the trial lawyers is going to reach additional crucial votes on amendments today and in final passage. Over the past few weeks, I have waited to hear rational, logical reasons for defeating this legislation or for gutting it with more compromises. I have heard none.

S. 96, with the substitute amendment offered, represents a reasonable and effective means of addressing this important issue. It represents a significant compromise from the version of S. 96 which passed out of the Commerce Committee, and even greater departure from H.R. 775 which was recently passed by the other body. It truly incorporates bipartisan discussion, negotiation, and compromise. While ensuring it is not mere window dressing or mirage, there is nothing in this bill which should be objectionable to any of my colleagues who truly want a solution to the Y2K problem rather than an excuse to protect the litigation industry. This matter is of utmost importance to the broadest cross-section of American commerce imaginable. Accounting, banking, insurance, energy, utilities, retail, wholesale, high tech, large and small, all support this effort to prevent and remedy Y2K problems and to avoid a disastrous litigation quagmire. They are unanimous and steadfast in their support for S. 96 with the Wyden and Dodd agreements.

As opponents, we have the trial lawyers, a cost center in our economy. The interests of the trial lawyers are clearly to assure a continued income stream from Y2K litigation. I have been told that over 500 law firms have established practice specialties to handle

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Y2K litigation. Many of these firms are reportedly touring the country dredging for clients. Opportunistic legislation costs the economy money, time, and resources which then cannot be expended on value-added productivity.

As I have stated several times during this debate, the cost of solving the Y2K problem is staggering. Experts have estimated that businesses in the United States alone will spend \$50 billion in fixing affected computers, products, and systems. But what experts have also concluded is that the real problems in costs associated with Y2K may not be the January 1 failures but the lawsuits filed to create problems where none exist.

An article in USA Today on April 28 by Kevin Maney sums it up. I quote:

Experts have increasingly been saying the Y2K problem won't be so bad, at least relative to the catastrophe once predicted. Companies and governments have worked hard to fix the bug. Y2K-related breakdowns expected by now have been mild to nonexistent. For the lawyers, this could be like training for the Olympics, then having the games called off. The concern, though, is that this species of Y2K lawyer has proliferated and now it's got to eat something. If there aren't enough legitimate cases to go around, they may dig their teeth into anything. In other words, lawyers might make sure Y2K is really bad even if it's not.

I am looking forward to continued debate on the merits of this bill with those who do object to it. I look forward to voting on other amendments and bringing this critical legislation to a successful conclusion.

I believe the two votes we took yesterday, one on the Kerry amendment and one on the Leahy amendment, clearly indicate the position of the significant majority of this body, because those two were very critical amendments. Both of them would have had a significant effect on this legislation—obviously, in my view, a significant weakening effect.

I thought the debate we had yesterday, especially with the Senator from Massachusetts but also with others, was a very important and valuable debate and contributed to the knowledge and information of all Members of the Senate. We intend very soon to propose a couple of amendments that have been agreed to by both sides, but at this time, with the absence of the minority in the Chamber, we will wait for that to happen.

I want to quote from a statement of "Administration Policy" concerning this legislation.

The administration strongly opposes S. 96 as reported by the Commerce Committee, as well as the amendment intended to be proposed by Senators McCAIN and WYDEN as a substitute. The administration's overriding concern is that S. 96 is amended by the McCain-Wyden amendment . . .

Actually, it is McCain-Wyden-Dodd . . . will not enhance readiness, and may in fact decrease the incentives organizations have to be ready to assist customers and business partners to be ready for the transition of the next century. This measure would protect defendants in Y2K actions by capping

punitive damages and by limiting the extent of their liability to their proportional share of damages, but would not link these benefits to those defendants' efforts to solve their customers Y2K problems now. As a result, S. 96 would reduce the liability these defendants may face, even if they do nothing, and accordingly undermine their incentives to act now when the damage due to Y2K failures can still be averted or minimized.

I have to admit, as a member of the opposition, that I have seen some fairly tortured logic associated with messages of veto threats by the administration. I am not sure I have ever seen such tortured logic as is embodied in this particular paragraph I just described.

One of the fundamental facts that has been ignored—obviously must have been ignored in this message from the Executive Office of the President, OMB—is that these companies and corporations that are all supporting this legislation are both plaintiffs and defendants. In other words, many of these companies will be bringing suit themselves or seeking to have others fix their Y2K problems and may bring it to court if that is not the case.

When we are talking about this legislation, at least according to the administration, S. 96 would reduce the liability these defendants face, even if they do nothing, and accordingly undermine their incentives to act now. One would have to have one's curiosity aroused as to why people who are prospective plaintiffs would limit their ability willingly to seek redress and to repair any problems associated with their business.

From the Clinton administration there is a "Background Paper" from PPI, the Progressive Policy Institute, entitled "Avoiding the Y2K Lawsuit Frenzy, Ensuring Y2K Liability Fairness." I would like to quote from that. The authors are Robert Atkinson and Joseph Ward.

While the Clinton Administration has voiced support for some of the broad goals found in these bills, it has expressed serious reservations about certain provisions, in part on the grounds that their scope is unprecedented and that it is not fair to limit liability for firms in this or any circumstance. As discussed below, some of its concerns should be addressed in revised legislative language, but the overall concept of a fair liability regime is still very necessary in this case. It is important to recognize that the Year 2000 is a one-time event that appropriately deserves a one-time solution.

That seems to have been ignored by the administration. In three years, this legislation sunsets. Then we go back. No matter how zealous an advocate I happen to be for raw tort reform and product liability reform, the fact is that this legislation will be over 3 years from now.

The goal of public policy in cases like this should be the side of innovation and economic growth, and not on the side of predatory legal practices that seek to harvest the fruits of others' labor. In this regard, the bills mentioned above are similar to the Private Securities Litigation Reform Act that the Progressive Policy Institute (PPI) supported in 1995, which sought to reduce litiga-

tion that would harm economic growth or raise the cost of goods and services for most Americans. However, while PPI believes that some Y2K liability-limiting legislation is needed and that these bills provide a useful framework for action, there are certain aspects in each of the bills that appear to err too far in favor of potential defendants. In particular, it appears that some of the restrictions on who can recover both punitive damages and compensatory damages for economic loss may exclude individuals who suffer losses resulting from a defendant's reckless disregard or fraudulent behavior. In order to ensure that effective liability-limiting legislation passes Congress with required bipartisan support, both sides of the aisle should work together to responsibly and fairly address these issues.

Which we did address, thanks to Senator WYDEN and Senator DODD.

They:

Encourage remediation over litigation and the assignment of blame;

Enact fair rules that reassure businesses that honest efforts at remediation will be rewarded by limiting liability, while enforcing contracts and punishing negligence;

Promote Alternative Dispute Resolution; and

Discourage frivolous lawsuits while protecting avenues of redress for parties that suffer real injuries.

Clearly, thanks to not just the original legislation but the changes that we gladly accepted from Senator WYDEN and Senator DODD, we have addressed those concerns.

They go on to say:

The effects of abusive litigation could be further curbed by restricting the award of punitive damages. Punitive damages are meant to punish poor behavior and discourage it in the future.

Everybody knows we will not have this problem again.

However, because this is a one-time event, the only thing deterred by excessive punitive damages in Y2K cases would be remediation efforts by businesses.

Except in cases of personal injury, punitive damages should be awarded only if the plaintiff proves by clear and convincing evidence that the defendant knowingly acted with "reckless disregard."

Except in cases of personal injury, punitive damages should be awarded only if the plaintiff proves by clear and convincing evidence that the defendant knowingly acted with reckless disregard.

In his last State of the Union Address, President Clinton urged Congress to find solutions that would make the Y2K problem the last headache of the 20th century, rather than the first crisis of the 21st. Year 2000 liability legislation needs to be a part of that effort. By promoting Y2K remediation rather than unsubstantial and burdensome litigation, we can begin the next millennium focused on continuing this period of unprecedented economic growth, instead of unproductively squabbling over the errors of the past.

I want to point out again that already we are seeing a significant drain on our economy just fixing these problems associated with Y2K. Later on I will include in the RECORD some of the expenses that a number of major corporations and small businesses have already been required to expend that otherwise could have been spent on far

more productive and beneficial efforts, such as research and development, et cetera.

But if we add this burden, I am convinced, as are most economists, that we can have a definite deadening effect on this unprecedented economic prosperity we are experiencing thanks to the very nature of what we are trying to fix. Had it not been for this incredible information technology revolution we are going through, I know we would not be in this period of unprecedented economic prosperity. That is why I think this legislation is so important. I think in some respects you could rank this legislation among the most important that the Congress will address this year.

Again, I thank my friend, Senator WYDEN, and others on the other side of the aisle for joining together so we could obtain a significant majority that I believe will now give us room for optimism that we can pass this legislation today or, at the latest, early next week.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Thank you, Mr. President.

I would like to pick up on a couple of points made by Chairman McCAIN, and particularly on this matter of tackling the issue in a bipartisan way.

Certainly, when a consumer business gets flattened early in the next century as a result of a Y2K failure, they are not going to ask, is it a Democratic failure or a Republican failure? They are going to say: I have a problem. What is being done to fix it?

The central point we have been trying to make—Chairman McCAIN, and Senator DODD, who is the Democratic leader of the Y2K effort, and I—is that we have spent many weeks trying to tackle this in a bipartisan way.

The fact of the matter is that when the bill came out of the Senate Commerce Committee, we were not at that time able to come before the Senate and say we did in fact have a bipartisan bill.

As a result of the negotiations that have taken place for many weeks now—led by Senator DODD, our leader, Senator FEINSTEIN of California who has great expertise in this matter, and a variety of Democrats—we have now a bill that has 11 major changes that assist consumers and plaintiffs in getting a fair shake with respect to any litigation which may develop early in the next century.

These were all areas where a number of Members on the Democratic side of the aisle thought that the original Senate Commerce Committee bill came up short. We went to Chairman McCAIN, and we said we would like to get a good bill; we would like to get a bill the President of the United States could sign; we would like to get a bipartisan bill.

We said we had a few bottom lines. One of them was that we were not

going to change jurisprudence for all time; this was going to be a time-limited bill. Chairman McCAIN agreed to our request that this last for 36 months. This is a sunsetted piece of legislation. We insisted this bill not apply to anybody who suffers a personal injury as a result of a Y2K failure. If you are in an elevator or you suffer some other kind of grievous bodily injury as a result of a Y2K failure, all existing tort remedies apply.

We took out all the vague defenses that some people in the business community earlier thought were important. We said we are not going to give somebody protection if they just say they made a reasonable effort to go to bat for a plaintiff or the consumer.

Those 11 major changes were made to try to be responsive to what the White House and a variety of consumer groups feel strongly about.

Frankly, the area I am most interested in, in public policy, is consumer rights. I started with the Gray Panthers. I was director of the Gray Panthers for 7 years before I was elected to the House of Representatives, making sure that consumers got a fair shake and that the little guy was in a position, if they got stuck in the marketplace, to have remedies. That is at the heart of my public service career.

I believe this is a balanced bill. This forces defendants to go out and cure problems for which they have been responsible. It also tells plaintiffs we would like them to mitigate damages; we would like them to figure out ways to hold down the cost; we should direct as much as we possibly can to alternative dispute systems. Picking up on the theme of Chairman McCAIN, that is a bipartisan proposition. I think we have been responsive to key concerns that have been made by those with reservations about this bill.

There are some areas where we cannot go. I will emphasize as we move to today's debate a couple of those big concerns. We cannot allow under our legislation the creation of new Y2K torts that are not warranted on the basis of the facts. We believe, in areas like the economic loss issue which was debated so intensely yesterday, that the appropriate remedies involve State contract law. When consumers are faced with economic losses, we want to see them get a fair shake in this area, and we believe State contract law should govern.

What we are not able to do is allow those who believe State contract law is inadequate with respect to economic losses, we cannot support them repackaging those claims as new Y2K torts. We favor the status quo. With respect to economic losses, we want to see consumers protected in the right of contract. However, this Member of the Senate thinks it would be a big mistake to create on the floor of the Senate today and in the days ahead new Y2K torts, new tort claims, that don't exist today under current law.

I am very hopeful that we are able to finish this legislation today. It is bi-

partisan legislation now as a result of the 11 changes that have been made. I am very hopeful the White House will not veto this legislation. I have said repeatedly that to veto a responsible bill is just like lobbing a monkey wrench into the technology engine that is driving the Nation's prosperity. That is what is going to be the real effect of vetoing a responsible bill in this area.

We continue to remain open to ideas and suggestions from colleagues. We want this bill signed. We have made, as I say, 11 major changes since this bill left the Senate Commerce Committee on a bipartisan basis under the leadership of Senator DODD, who is the Democratic leader on the Y2K issue. There are areas where we cannot go, such as the creation of new Y2K torts in this area.

I look forward to today's debate and am anxious to continue to work with colleagues in a bipartisan way. I am very optimistic that the bill the Senate hopefully will pass today will get the support of the White House.

I yield the floor.

AMENDMENT NO. 612, AS MODIFIED

Mr. McCAIN. Mr. President, on behalf of Senator MURKOWSKI, I send a modification to Amendment No. 612.

It is my understanding this amendment is acceptable to both sides.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

The amendment (No. 612), as modified, is as follows:

Section 7(c) of the bill is amended by adding at the end the following:

(5) PRIORITY.—A prospective defendant receiving more than 1 notice under this section may give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 612), as modified, was agreed to.

Mr. McCAIN. I move to reconsider the vote.

Mr. HOLLINGS. I move to table the motion.

The motion to lay on the table was agreed to.

Mr. McCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GREGG). Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, there is no question that the distinguished Senator from Connecticut, Mr. DODD, and the distinguished Senator from Utah, Mr. BENNETT, have done yeoman work in alerting the land with respect to the potential Y2K changeover as of January 1, 2000. Pursuant to their diligent work, we have had hearings in

several of the committees. We have had laws passed now that allowed the parties to communicate with each other without fear of antitrust violations so they could go ahead and work to make sure that everyone was Y2K compliant.

I only came to the floor just momentarily, hearing about predatory law exercises, exercises of predatory law practices and otherwise you get what you get under the contract. The atmosphere or environment is totally out of sorts. We are hearing about a litigious society. The distinguished Senator from Connecticut again and again said, and I noted the expressions I was looking for in the morning Record: "running to the courthouse," "race to the courthouse," "rushing to the courthouse," on and on. Again: "shopping around to find someone with deep pockets," "glitches."

I have a glitch on my computer right now, and I know they have deep pockets, but I am not rushing to the courthouse. People who have computers want to do business. They rely on the computers for the procedures and the progress of their interests. Having practiced law actively in the courtroom for 20 years, I can tell you nobody rushes to the courthouse. Try a rush beginning this afternoon and you will find yourself standing in line. All the civil dockets and criminal dockets are full.

This panorama and environment painted by the proponents of this legislation is all out of sorts with reality. Tort claims are down. All the surveys we have had at the hearings show that tort claims are down. It is a litigious society. Everybody is suing everybody for sex discrimination or age discrimination or racial discrimination and various other suits that were unheard of 30 years ago and are now abundant on the docket. But with respect to claims, tort claims, if this afternoon I brought a summons and complaint on behalf of my distinguished chairman, I would be lucky if I could get to the courthouse during the year 1999. That is the reality.

Incidentally, the cases they talk about—litigious, frivolous cases and spurious charges and those kinds of things—and trial lawyers, they try to fit trial lawyers in there like they prey; "predatory" is the word used by my chairman. Trial lawyers have no time for fanciful or spurious claims whatsoever. They know when they get the client, the client does not have any money for billable hours. On the contrary, the client principally has to rely on the lawyer's faith in the claim of the client in order to take care of all the charges, all the expenses of interrogatories, discovery, the pleadings, the filings, the motions, the trial itself. And when you come to verdicts, mind you me, those who bring the claim have to get all 12 jurors by a greater weight or the preponderance of the evidence making that finding; 11 to 1 is a mistrial. So you have to get all 12 and you have to be sure there is no error within the trial.

All along, the expenses are taken care of. That is what nonpluses this particular individual Senator, in the sense I am surrounded here in the District of Columbia with 60,000 billable hour boys running around talking about "litigious society," "predatory practices," "rushing to the courthouse," "racing to the court," "running to the courthouse," "shopping around." Here is 59,000 lawyers registered to practice in the District of Columbia who will never see a courthouse. They will see a Congress. They will see you and me, the jurors. We are supposed to be fixed, so they work on fixing juries and running around spreading rumors and doing a favor here and getting a favor there. So that is the real world we live in.

But to paint this legislation as doing away with predatory practices and racing to the courthouse and running to the courthouse? You have a \$10,000 or \$20,000 computer, if you are a doctor and you have a computer, and you want it fixed. You do not want a trial. They have made it so you are bound to go out of business and not get a lawyer, if you cannot get any damages, economic damages.

The distinguished Senator from Oregon, again and again and again, says: Get what the contract says, get what the contract says, billable hours, get what the contract says. If you go buy a computer and get a warranty—and that is the contract—it is only for a certain period of time and everybody reads that warranty quick. Who says anything about economic damages? It will say something about a sound article for a sound price and they will give you some repairs after you stand in line, and so forth. But with respect to your standing in line and waiting, under this bill for 90 days, you are broke. You are out of business. You are closed down. You have lost your customers. This is a fast-moving world in which we live and small business, with all the competition, does not have in-house counsel on retainer, on billable hours, just as all the computer companies do that are force-feeding this particular measure.

That is why the Senator from South Carolina gets annoyed with the entire thrust of the measure.

With respect to its needs, let's go to the record. Under the Securities and Exchange Commission, all publicly listed companies, through their 10(k) reports to the SEC, give notice to the stockholders of the state of readiness, the worst case scenario, or the risk involved, the contingency plans to comply with any potential Y2K problem, and the cost. Many of them, most all of them—I do not know any privately. I talked with the gentleman from Yahoo. Four years ago, he was a Stanford student, and now he is well along the way. I admire him because, unlike AOL, America Online, that everybody is hugging and loving around here, dining and wining and traveling out to Virginia, Yahoo does not charge. America Online is trying for a monopoly. The

cable folks have around 300,000 to 400,000; America Online has 17 million, and their push for openness, openness, openness means: Let me make sure I retain my monopoly.

In any event, all of these are publicly held companies and they are burdened with that duty, and this has been going on. We act like everything with Y2K is going to happen tomorrow. The bill gives them 90 days. We are going to give them 180 days. Tell them to go ahead and fix it. Call up everybody now; test it; find out if it is Y2K compliant.

I look forward to meeting some of these company people later today. Cisco Systems, as of December 1998, a year and a half ago: Current products are largely compliant in their 10(k) report to the SEC.

Yes, here it is. Dell Computer. Here is a distinguished gentleman who has made a tremendous success. He deserves every bit of credit. I am not talking in a cursory or derogatory fashion. I am talking in an admiring fashion. I love success and particularly business success. I give him every bit of respect. Dell Computer, as of December 14, 1998, in their report: All products shipped since January 1997 are Y2K certified, I say to the Senator from Oregon. I want him to hear that. We have it here. Dell Computer, one of the best, as of December 14, 1998, all products shipped since January 1997 are Y2K certified.

General Electric: A complete analysis of the microprocesses; Y2K compliant as of November 12, 1998.

Intel Corporation: The company has assessed the ability of its products to handle the Y2K issue and developed the list, published it and support follows. As of November 10, 1998, they will be in compliance. Deployment, integration tested, will be completed by mid-1999.

I do not have their mid-1999 report, but that is what they reported to their stockholders. That is where lawyers look at these things.

Incidentally, this Senator voted for the Securities and Exchange Commission reform with respect to the excessive reading of these filings and bringing any and every charge as a result of 10(k) filings. We did not want to require the filing and just lay the groundwork for predatory legal practices. I helped the distinguished Senator, Nancy Kassebaum, pass the airplane tort liability bill. I have been on both sides of this fence. But they have me categorized, and I love it.

The truth is, Yahoo systems are currently Y2K compliant in all respects. That is February 26, 1999.

Even writing a book with respect to this is very interesting. The book, to be published later on this summer, by Eamonn Fingleton, is "In Praise of Hard Industries." I quote from page 65:

A major part of the problem is that corporate America's top executives have not been monitoring their information technology departments as closely as they should. As Paul A. Strassmann has pointed

out, the millennium problem, for instance, is stunning evidence of "managerial laxity." In his book, *The Squandered Computer*, Strassmann comments: "There is absolutely no justification for allowing this condition to burst to executive attention at this late stage."

According to Strassmann, a former chief information officer of Xerox Corporation, the computer software industry should have started getting ready for the new millennium by the early 1970s, if not the mid-1960s. He gives short shrift to the software industry's excuse that the millennium bug arose because programmers were legitimately concerned about economizing on computer space. He maintains that such economizing was justifiable only in the very earliest days of computerization, the era of punched cards, which ended in the mid-1960s. "The insistence on retaining for more than thirty years a calendar recording system that everyone knew would fail after December 31, 1999, is inexcusable management."

There you go. Here they come up with Chicken Little, the sky is falling, predatory law practice, racing to, running to the courthouse, whoopee to the courthouse, a total fanciful background that does not exist.

Let me come up to date. What is this? I never have read it before, but I learn. The May 1999 issue of *Institutional Investors*. This crowd does nothing but make money and sit around and punch. The article, on page 31, "Y2K? Why not?"

Mr. President, I ask unanimous consent that article be printed in the RECORD.

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

Y2K? WHY NOT?

The millennium draws near, with no shortage of dire prognostications. The Y2K computer bug, depending on which Cassandra is consulted, may bring widespread power outages, transportation foul-ups, even economic hardship. Duetsche Bank Securities chief economist Edward Yardeni, for example, believes there's a 70 percent chance that a recession—most likely severe and yearlong—will hit in 2000, all because so many computers will, at the stroke of midnight, think they're entering the 20th century.

These worries notwithstanding, most U.S. companies appear to believe they have the Y2K problem licked. A resounding 88.1 percent of the chief financial officers responding to this month's CFO Forum expect that their companies will make the transition to the next century without any computer problems. Just as important, CFOs know that outside contacts must be ready as well, and 95.2 percent say they have worked with suppliers to that end. Nearly 73 percent of respondents are convinced that their suppliers and clients will be prepared for the year 2000; only 4.8 percent worry that suppliers or clients won't be ready.

Such is the CFO's confidence that 62.7 percent of respondents believe that fears of a millennial computer crisis are overblown. And as for those predictions of economic recession, not a single CFO responding to the survey agrees. Admits economist Yardeni, "I seem to be the only one on this planet who thinks we'll have any chance of a recession, let alone a severe one." He suspects that CFOs are relying too much on their tech departments' reassurances. "I wish there was more verification of these happy tales the CFOs are reporting."

Time will tell.

Do you feel your company's internal computer systems are prepared to make the year-2000 transition without problems?

Yes: 88.1%
No: 6.0%
Not sure: 6.0%

Have you done a dry run of your computer systems for the year-2000 transition?

Yes: 80.2%
No: 19.8%

If yes, how did they fare?

No problems: 12.1%
Few problems: 86.4%
Major problems: 1.5%

What have you done to prepare for the year-2000 transition?

Tested all systems: 87.3%
Rewrote computer code: 81.9%
Hired consultants: 75.9%
Bought new software: 86.7%
Bought new hardware: 74.7%
Worked with suppliers to ensure preparedness: 95.2%
Alerted customers to your preparations: 81.9%
Informed the Securities and Exchange Commission of your actions: 62.7%
Solicited legal advice: 47.0%

Do you think most of your company's suppliers or clients will make the year-2000 transition without trouble?

Yes: 72.6%
No: 4.8%
Not sure: 22.6%

What parts of your financial operations are vulnerable to year-2000 problems?

Billing and payment systems: 66.0%
Accounting and financial reporting: 58.5%
Cash management: 60.4%
Foreign exchange: 22.6%
Pension management: 34.0%
Payment to bondholders or shareholders: 13.2%
Risk management: 20.8%
Corporate growth and acquisitions: 13.2%
Capital-raising plans: 5.7%

How much money has your company spent preparing for the year-2000 transition?

Less than \$500,000: 11.0%
\$500,000 to \$999,999: 6.1%
\$1 million to \$2.49 million: 4.9%
\$2.5 million to \$4.9 million: 20.7%
\$5 million to \$9.9 million: 12.2%
\$10 million to \$14.9 million: 8.5%
\$15 million to \$19.9 million: 4.9%
\$20 million to \$29.9 million: 11.0%
\$30 million to \$50 million: 11.0%
More than \$50 million: 9.8%

Did the cost of preparing for the year-2000 transition have a material impact on your company's business or financial performance in 1998?

Yes: 16.9%
No: 83.1%

Do you expect it to have a material impact in 1999?

Yes: 10.8%
No: 85.5%
Don't know: 3.6%

Do you expect Y2K transition problems to have a material impact on your company's business or financial performance next year?

Yes: 3.6%
No: 89.2%
Don't know: 7.2%

Do you think the fears of a year-2000 crisis are overblown?

Yes: 62.7%
No: 21.7%
Don't know: 15.7%

What effect do you think year-2000 transition problems will have on U.S. business and the U.S. economy overall?

Relatively no effect: 14.3%
A few weeks of headaches: 44.2%

A few months of headaches: 37.7%
A minor drop in GDP: 3.9%
A major drop in GDP: 0.0%
Economic recession: 0.0%

The results of CFO Forum are based on quarterly surveys of a universe of 1,600 chief financial officers. Because of rounding, responses may not total 100 percent.

Mr. HOLLINGS. I thank the Presiding Officer.

These worries notwithstanding, most U.S. companies appear to believe they have the Y2K problem licked. A resounding 88.1 percent of the chief financial officers responding to this month's CFO Forum expect that their companies will make the transition to the next century without any computer problems. Just as important, CFOs know that outside contacts must be ready as well, and 95.2 percent say they have worked with suppliers to that end. Nearly 73 percent of the respondents are convinced that their suppliers and clients will be prepared for the year 2000; only 4.8 percent worry that suppliers or clients won't be ready.

Now we are going to change 200 years of tort law for 4.8 percent that still have 180 days, and the law does not give them but 90. So they must think something can happen in 90 days. We can double that. You like 90; I give you 180. Start right now. You don't have to do that. The market will take care of it, as *Business Week* says it is doing.

I quote further:

Such is the CFOs' confidence that 62.7 percent of respondents believe that failures of a millennial computer crisis are overblown. And as for those predictions of economic recession, not a single CFO responding to the survey agrees.

This prediction had been made some months back, last year sometime by Yardeni, a respected economist. I remember the gentleman because I was at the hearings when he used to be with Chase Manhattan. He talked that it could even cause a recession.

Not a single CFO responding to the survey agrees with that. Admits economist Yardeni, "I seem to be the only one on this planet who thinks we'll have any chance of a recession, let alone a severe one."

Tell Yardeni to come to the Congress. The majority around here knows we are going to have a recession—predatory practices, racing to the courthouse. There would just be a jam to get the business.

I quote:

He suspects that CFOs are relying too much on their tech departments' reassurances. "I wish there was more verification of these happy tales * * *."

Time will tell.

Here is the question that is printed in the particular article:

Do you feel your company's internal computer systems are prepared to make the year-2000 transition without problems?

The answer is: 88.1 percent said yes; 6 percent said no.

Next question:

Have you done a dry run of your computer systems for the year-2000 transition?

The answer is: 80.2 percent said yes; 19.8, no.

So four-fifths have already been testing as a result of the fine work by the Senator from Utah and the Senator

from Connecticut and, of course, our distinguished Senator on the Judiciary Committee, Chairman HATCH, and Senator LEAHY of Vermont.

Then you go down there:

What have you done?

They have all kinds of things down here: 86 percent bought new software. You see Dell and Intel and everybody else, they are certifying that when the purchase is made, this is Y2K compliant. Business is business. They cannot be playing around with monkey shines waiting on politicians in Washington to change the tort law. They have good sense. That is why they are successful.

Do you expect the Y2K transition problems to have a material impact on your company's business or financial performance next year?

The answer: 3.6 percent said yes; 89.2 percent said no.

Do you think the fears of a year-2000 crisis are overblown [in the business world]?

They give you a long list. You know how chambers of commerce work. They are stupid enough, by gosh, to give me a medal this year for last year when they are opposing me in the election. So don't tell me about the Chamber of Commerce. You are looking at the fellow with the Enterprise Award from the National Chamber of Commerce. But last year I got the stinkbomb. I can tell you that right now.

They send around letters and leaches and everything that I was terrible for business. So don't listen to all the letters about all of those places. None of those State chambers of commerce is complaining. I notice they got one from South Carolina. They don't know from sic'em down there about Y2K. That is one place.

You don't have to worry about what the State of North Carolina does. They will be ready come next month. They had a recent article—just yesterday morning; I should have brought that to the floor—that they are all in shape and ready to go. But for all the cases, the best I have heard, as my distinguished chairman mentioned, 80 cases—I have not been able to find that. The best authority has said that is mixed in with some other cases.

The most recent information—and brought right up to date—is the letter a month ago by Ronald Weikers who appeared before our committee, an attorney at law. Let me qualify him. The gentleman says here in this letter:

I have studied the Y2K problem carefully from the legal perspective, and have written a book entitled "Litigating Year 2000 Cases", which will be published by West Group in June. I frequently write and speak about the subject. I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation. Feel free to call me, should you have any questions.

He starts off the letter:

Thank you for speaking with me earlier. Thirteen (13) of the 44 Y2K lawsuits—

This is as of April 26—

Thirteen (13) of the 44 Y2K lawsuits that have been filed to date have been dismissed entirely or almost entirely.

There is a court system, undescribed, or improperly described, by Senators on the floor of the Senate. The court generally does not have stumblebums just sitting up there and all rushing to the courtroom: Let me give you 12 people, and here is your money, and let's go. They test the truth of all the allegations, and even agreeing with all your allegations, you still do not have a case in court.

Thirteen of them have already been dismissed.

Twelve (12) cases have been settled for moderate sums or for no money.

They are not deep-pocket cases.

The legal system is weeding out frivolous claims, and Y2K legislation is therefore unnecessary.

Thirty-five (35) cases have been filed on behalf of corporate entities, such as health care providers, retailers, manufacturers, service providers and more. Nine (9) cases have been filed on behalf of individuals. This trend will continue. Thus, the same corporations that are lobbying for Y2K legislation may be limiting their own rights to recover remediation costs or damages.

That is signed by Ronald N. Weikers. We asked yesterday, and he has updated the 44 to 50. He has added six more since that time, which we have here for the record.

So there is all the law and the Securities and Exchange Commission requiring that you notify your stockholders about any and all problems, and what are you doing about it, and the potential costs. And there is all of the debate in Congress, and the special law passed this year, and everything else like that.

Those who usually are on the side of corporate America—even the Washington Post says let's not just be jumping around passing laws. That is the most irritating thing. I cannot get anything done with the budget. Here we are spending over \$200 billion more than we are taking in, and everybody is talking about: The surplus, the surplus, the surplus. It is not just the \$127 billion from Social Security, it is the money from the Senators' retirement fund, the civil service retirement fund, the military retirees, the highway trust fund, the airport trust fund, the Federal Financing Bank. Medicare moneys are being used for Kosovo. Think of that, Senators.

But everybody is talking about whether we are going to have a spending cut or spending increase or tax cut because of the fat surpluses. I hope they will bring that thing up. I cannot get anything done about that. I can't get anything done about campaign finance. I was here when we passed it in 1974, 25 years ago. It was a good law. It did away with soft money, no cash, everything on top of the table, and limited spending in elections. Senator THURMOND and I could have had about 670,000 registered voters. Let's double it to 1½ million, 2 million. I just had to spend \$5.5 million to come back here and make this talk.

I can tell you here and now, this thing is outrageous, because I am

spending all my time racing around the country. Talk about small business. Raise in a year and a half to 2 years 5½ million with shares of stock in general at \$100 a share. That is a pretty good business. Don't tell this politician about small business. I am a small businessman. We had to raise that money, but it is a disgrace.

We can't get anything done. Fortunately, I supported McCain-Feingold. Senator MCCAIN now has joined me on my constitutional amendment, one line: The Congress is hereby empowered to regulate or control spending in Federal elections. In fact, the States like it so much we added the States are able to control spending in State elections. Thereby, we immediately go back and we make constitutional the original act, or whatever they want to do. It doesn't disturb McCain-Feingold. We can still proceed with that and not hear the argument of the Senator from Kentucky about whether it is issue oriented or candidate oriented. All that is subjective. We will know, once we pass McCain-Feingold, it is constitutional; that we hadn't wasted time.

That is what I want. Just give the Congress its will to get rid of this cancer on the body politic. We can't get that done.

You can't get anything for the Patients' Bill of Rights. You can't get anything for the ultimate solution to Social Security. You can't get anything done about anything, but they come up with a nonproblem that everybody, corporate America and everybody else, says, look, we have been moving on. We have cut off our suppliers and everything else of that kind. Then you come to the floor with the overreach.

Well, last year we protected the consumers, and yesterday afternoon we said no protection for the consumers. They said they won't get a lawyer. I can guarantee you, they won't get a good lawyer. A lawyer who is really working for a living would say: Wait a minute, businessman. You come in here, you have to wait. You came in too quick. You have to wait 90 days before you really come in and get anything done.

In the meantime, they have been given notice so they are hiding all the records. They learned something from Rosemary Woods and President Nixon. I can tell you that. So the records are not around. They have cleaned up their records. So they know.

Otherwise, having waited that time, then you have to file; then you have to get in line. You are waiting another year. Who is the lawyer who is going to carry those expenses? He has other work to do.

So they are not going to be bringing any cases. You are not going to be able to get a lawyer with this bill. That is what is going to prevent you from getting a lawyer, because there is no economic damage. The economic damage, the real loss is not the \$10,000 for the computer. It is the million-dollar loss

of customers and goodwill and the ability to serve and the loss of advertising revenues and everything else going down.

My friend from Oregon says: Well, we give you what the contract says; this bill will give you what the contract says.

Sure, it gives what the contract says. That is an oxymoron. We know it gives you what the contract says. But the contract doesn't contract for economic loss. We are talking about misrepresentation, wrongful acts, fraudulent representation, tort—not contract. So don't give me this stuff about the contract, and we are giving you exactly what the contract says.

That is our complaint. We want what States all over the Nation, all 50 States, give you right now, and we do not want to repeal that.

When we don't repeal it, then they come in in the next 180 days, the next 6 months, and they go to work and they start getting something done, because they realize this bill has either been killed in the Congress or vetoed by the President. They have to get right with the market world or get out of the way. That is the way free enterprise works. It is a wonderful thing. We all talk about it.

By the way, don't give me this thing about the computer world created all of this productivity. Sure, it increases productivity. But what really created this economy—we are not going to stand here and listen time and time again—is the 1993 economic plan. Don't give the award to Bill Gates; give it to Bob Rubin.

We were there. We had to struggle to get the votes. We had to bring in the Vice President to get the vote. They were saying over at the White House and at the Economic Council: Let us have a stimulus; we have to have a stimulus. Rubin says: No, pay the bill.

What did we do? We paid the bill. We started paying off the bill. With what? Increased taxes. With increased taxes on what? Social Security.

I voted for it. The Senator from Texas said: You voted for increased taxes on Social Security. They will hunt you down in the streets and shoot you like dogs. That is what he said.

The other Senator, Mr. Packwood, said: I will give you my house, the chairman of the Finance Committee, if this thing works.

KASICH, who is running for President, I am trying to find JOHN. I don't know whether he is running as a Democrat or Republican, because he said: If this plan works, I will change parties and become a Democrat.

We have the record. They are trying to subterfuge this as this computerization is moving overseas and asking for what? They want all the special laws. They want capital gains. They are making too much money. So they have the onslaught: Wait, estate taxes, we ought not to die and be taxed at the same time. So we have to change the formula for estate taxes. No, excuse

me, immigrants. Don't pay Americans, just bring them all in. Let's have an exemption from the immigration laws. Let's have an exemption from the State tort laws. Let's do everything. Let's upset the world for the idle rich.

Come on, 22,000 millionaires for Bill Gates. I employ, by gosh, instead, 200,000 textile workers at the mill. I would much rather have that crowd. Fine for the IQ group, but I am talking about working Americans, middle America, the backbone of our democratic society.

So what we have here is an onslaught for the computer world, for capital gains, immigration laws, estate taxes, Y2K exemptions, any and every thing. They have money. They have contributions. We would like to get their contributions. So Democrats and Republicans are falling all over each other trying to show what goody-goody boys we are. We will change the State laws. We will take the rights away from consumers and injured parties. We will destroy small businesses that bought a computer. They won't even be able to get a lawyer with all of this stringout of how to bring a case and everything else of that kind.

Saying, don't worry about it, it is only for 3 years, 3 years it will be gone—if there is a crisis on January 1, it shouldn't exist for over a year. Everybody will know within a year whether they are Y2K compliant and be able to file. But no, they want to use this for further argument, and I gain-say the way they are shoving it now, not agreeing to economic damages in the Kerry amendment, turning down the Leahy amendment for consumers rights. I am afraid what I said was a footprint for the Chamber of Commerce, but rather I think they really are on a forced drive for a veto because they can use that. Who vetoed productivity, the great industry that brought all of this productivity to America? Who vetoed it?

I can see Vice President GORE trying to get up an answer to that one. That is going to be very interesting.

Senator HATCH led the way with his bill last year, and we got together and started confronting this particular problem. As I speak—and I am ready to yield now to my distinguished colleague from North Carolina—they have not 90 days, but we are giving them twice that amount. Put everybody on notice, this thing they tell me is on C-SPAN so everybody ought to know to get Y2K compliant, try it out, test your set. If it is not, go down and, by gosh, get it fixed now. Don't run to the courthouse. Run to the computer salesman who sold you the thing, because they—Dell, Intel, Yahoo, all the rest of them—are coming in and saying that everything is Y2K compliant. We can't wait around for Congress to change all the tort laws.

I yield the floor.

Mr. MCCAIN. Mr. President, I can't help but note the Senator from South Carolina mentioned Mr. Gates has 2,000 employees for millionaires.

Mr. HOLLINGS. Twenty-two thousand. That is in Time magazine, the year-end report. It is a wonderful operation.

Mr. MCCAIN. There are 22,000 millionaires. I know our respective staffs feel like millionaires for having had the opportunity of working here in the Senate with us. I know I speak for all of our staffs.

UNANIMOUS CONSENT AGREEMENT—S. 886

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 91, S. 886, the State Department reauthorization bill, at a time determined by the two leaders, and that the bill be considered under the following limitations: that the only first-degree amendments in order be the following, and that they be subject to relevant second-degree amendments, with any debate time on amendments controlled in the usual form, provided that time for debate on any second-degree amendment would be limited to that accorded the amendment to which it is offered; that upon disposition of all amendments, the bill be read the third time, and the Senate proceed to vote on passage of the bill, as amended, if amended, with no intervening action.

I submit the list of amendments.

The list is as follows:

Abraham-Grans: U.S. entry/exit controls.
Ashcroft: 4 relevant.
Baucus: 3 relevant.
Biden: 5 relevant.
Bingaman: Science counselors—embassies.
Daschle: 2 relevant.
Dodd: 3 relevant.
Durbini: Baltics and Northeast Europe.
Feingold: 4 relevant.
Feinstein: relevant.
Helms: 2 relevant.
Kerry: 3 relevant.
Leahy: 5 relevant.
Lott: 2 relevant.
Managers' amendment.
Kennedy: relevant.
Moynihan: relevant.
Reed: 2 relevant.
Reid: relevant.
Sarbanes: 3 relevant.
Thomas: veterans
Wellstone: 3 relevant.
Wellstone: trafficking.
Wellstone: child soldiers.

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

Y2K ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that Senator EDWARDS be recognized to offer two amendments as provided in the previous consent, and time on both amendments be limited to 1 hour total, to be equally divided in the usual form, and no amendments be in order to the Edwards amendments.

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

Mr. MCCAIN. Mr. President, before yielding, we would expect votes on the