with respect to title I, especially for failing schools, where instead of saying that title I is focused on schools and on systems, we will say, again, for those States and for those communities that wish to do so, title I will be focused on the individual students who are eligible, the underprivileged students who are eligible, so that they, and not the systems and not particular schools, will be the goals of title I.

Has the present title I been so successful that it cannot stand a change, even a change that offers an option to States and to individual school districts? That is what we hear from the other side of the aisle, that it would be terrible. We have 35-year-old reports cited concerning things that happened two generations ago as an argument against any kind of innovation today and as an argument for maintaining a system that, bluntly, has not worked, that has not worked at all.

At its most fundamental level, this is a debate about who knows best and who cares most: Members of this body and people working in the bowels of the Department of Education in Washington, DC, or those men and women all across the United States of America who are concerned about the future of their children, those men and women all across the United States of America who have dedicated their entire professional lives to providing that education for our children—their teachers and their principals and their superintendents—and those men and women across America who, in almost every case without compensation, have entered the political arena and have run for and have been elected to school boards in their various communities.

Our opponents of this bill say that none of these people should be trusted; only we should be trusted. We say we want to repose far more trust and confidence in those individuals all across the United States of America, we want to hold them accountable, but we want to hold them accountable on the basis of their results, and their results only.

That is what the debate will be about for the balance of this week and perhaps next week, as well.

MORNING BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO MING CHEN HSU

Mr. LOTT. Mr. President, I rise today to pay tribute to a great American, Ming Chen Hsu. Last December, Ms. Hsu retired from the Federal Maritime Commission (FMC), where she served as a Commissioner for nine and one-half years. Ms. Hsu was first appointed to the Commission by President George Bush and confirmed by the Senate in 1990. She was reappointed and reconfirmed in October, 1991.

Many of my colleagues may not realize it, but the ocean shipping system is vital to international trade and is the underpinning for the international trade on which the vitality of our Nation's economy depends. A fair and open maritime transportation system creates business opportunities for U.S. shipping companies and provides more favorable transportation conditions for U.S. imports and exports. Ensuring a fair, open, competitive and efficient ocean transportation system is the mission of the FMC. The Commission has a number of important responsibilities under the shipping laws of the United States, including: the responsibility to ensure just and reasonable practices by the ocean common carriers, marine terminal operators, conferences, ports and ocean transportation intermediaries operating in the U.S. foreign commerce; monitor and address the laws and practices of foreign governments which could have a discriminatory or adverse impact on shipping conditions in the U.S. trades; and enforce special regulatory requirements applicable to carriers owned or controlled by foreign governments.

Mr. President, for almost a decade, Ms. Hsu played an active and important role in the life and decisions of the Commission. The Commission and the Nation have been fortunate in her service. During her tenure, Ms. Hsu's experience and judgment helped guide the Commission through a number of challenges and actions which will continue to shape the work of the Commission long after her retirement.

In 1998, the Congress passed and the President signed the Ocean Shipping Reform Act (OSRA), which amended the Shipping Act of 1984, the primary shipping statute administered by the FMC. As I have said before, the OSRA signaled a paradigm shift in the conduct of the ocean liner business and its regulation by the FMC. Where ocean carrier pricing and service options were diluted by the conference system and ''me too'' requirements, an unprecedented degree of flexibility and choice will result. Where agency oversight once focused on using rigid systems of tariff and contract filing to scrutinize individual transactions, the ''big picture'' of ensuring the existence of competitive liner service by a healthy ocean carrier industry to facilitate fair and open commerce among our trading partners will become the oversight priority. This week marks the one-year anniversary of the implementation of the Ocean Shipping Reform Act of 1998. It is most fitting that we take the time to remember the career of Ming Chen Hsu this week.

Mr. President, Ms. Hsu clearly recognized the important change in the business and regulation by the FMC of ocean shipping brought about by the Ocean Shipping Reform Act. During the Commission's consideration of regulations to implement OSRA, Ms. Hsu played a critical role in working with the other Commissioners and FMC staff to ensure that the regulations embodied the spirit of the new law. As she told a large gathering of shippers and industry representatives, ''This has been not only a long journey, but a long needed journey * * * With the passage of the Ocean Shipping Reform Act and the FMC's new regulations, I believe the maritime industry will be far less shackled by burdensome and needless regulations * * * I believe we can now look forward to an environment which gives you the freedom and flexibility to develop innovative solutions to your ever-changing ocean transportation needs.''

Ms. Hsu's wisdom and experience was also instrumental in helping the Commission navigate one the Commission's most difficult and highly-publicized actions in recent years. In 1998, the Commission took action against a series of restrictive port conditions in Japan. As a result of these conditions, both U.S. carriers and U.S. trade were burdened with unreasonably high costs and inefficiencies. Because of the Commission's action, steps were taken by Japan to initiate improvements to its port system. If ultimately realized, these improvements will substantially facilitate and benefit the ocean trade of both nations.

Mr. President, during her career at the Commission, Ms. Hsu led a number of Commission initiatives. Among others, in 1992 Ms. Hsu served at the request of then FMC Chairman Christopher Koch as Investigative Officer for the Commission's Fact Finding 20. Under her leadership, the Fact Finding held numerous hearings across the United States in an effort to examine and understand the experience of shippers associations and transportation intermediaries under the Shipping Act of 1984. Fact Finding 20 ultimately led to Commission efforts to ensure that shippers associations and transportation intermediaries received all of the benefits intended by Congress in enacting the 1984 Act.

Commissioner Hsu's service at the Federal Maritime Commission is just the most recent milestone in a remarkable life and career. A naturalized U.S. citizen, Ming Chen Hsu came as a student to the United States from her native Beijing, China. Prior to coming to the Commission, Ms. Hsu has had an extensive career in international trade and commerce in both the public and private sectors. She was a Vice President for International Trade for the RCA Corporation in New York, where she held a variety of executive positions in the areas of international marketing and planning. She played a pivotal role in gaining market access for RCA in China in the 1970's. She was appointed by former Governor Thomas H. Kean of New Jersey as Special Trade Representative and as Director of the State's Division of International Trade, a position she held from 1982 to 1990. In her positions with RCA and the

state of New Jersey, Ms. Hsu led over thirty trade missions to countries throughout the world.

Mr. President, Ms. Hsu has served on several U.S. Federal advisory committees, having been appointed by the President, the Secretary of Defense, the Secretary of Commerce and the U.S. Trade Representative. She is a recipient of numerous awards including the Medal of Freedom and the Eisenhower Award for Meritorious Service. She is listed in Who's Who of America. Ms. Hsu is a founding member and director of the Committee of 100, an organization of prominent Chinese Americans and is a member of the National Committee on United States-China Relations. She also serves on the National Advisory Forum to the U.S. Holocaust Memorial.

Ms. Hsu is a Summa Cum Laude graduate of George Washington University and member of Phi Beta Kappa. At New York University, she was a Penfield Fellow for International Law. Ms. Hsu was the recipient of the George Washington Alumni Achievement Award in 1983 and holds several honorary degrees.

Mr. President, I congratulate Ming Chen Hsu on her exemplary career at the Federal Maritime Commission and salute her contributions to the ocean transportation industry. I add my voice to those who say ''thank you'' for her service to the Nation. And finally, I wish her smooth sailing in her future endeavors.

IMPORTANCE OF PRIVATE PROSECUTIONS

Mrs. FEINSTEIN. Mr. President, last week, during the debate on a proposed constitutional amendment to protect the rights of crime victims, Senator LEAHY made several lengthy statements challenging some of the facts set forth by supporters of the amendment, including myself. We responded to many of those arguments at the time—and, I believe, refuted them. I do want not burden the record now by repeating all our contentions or making new ones.

However, there is one argument that the Senator from Vermont made during the waning hours of debate on the amendment that I find particularly troubling. It involves the role of victims in criminal proceedings at the time our Constitution was written. Because I believe the Senator's comments contradict the clear weight of American history, I feel compelled to respond.

Here is the argument Senator LEAHY disputes: At the time the Constitution was written, the bulk of prosecutions were by private individuals. Typically, a crime was committed and then the victim initiated and then pursued that criminal case. Because victims were parties to most criminal cases, they enjoyed the basic rights to notice, to be present, and to be heard under regular court rules. Given the fact that victims already had basic rights in criminal proceedings, it is perhaps understandable that the Framers of our Constitution did not think to provide victims with protection in our national charter.

The Senator from Vermont tried to rebut this argument. Citing an encyclopedia article and a couple of law review articles, he claimed that, by the time of the Constitutional Convention, public prosecution was ''standard'' and private prosecution had largely disappeared.

Because Senator LEAHY's comments suggest that some confusion about this issue lingers among my colleagues, I would now like to provide some additional evidence demonstrating that private prosecutions had not only not largely disappeared in the late 18th century but in fact were the norm.

First, it is important to concede one point: some public prosecutors did exist at the time of the framing of the Constitution. Certainly, by then, the office of public prosecutor had been established in some of the colonies—such as Connecticut, Vermont, and Virginia. But just because some public prosecutors existed in the late 18th century does not mean that they played a major role or that public prosecution had supplanted private prosecution. In fact, criminal prosecution in 18th century English and colonial courts consisted primarily of private suits by victims. Such prosecutions continued in many States throughout much of the 19th century.

Thus, contrary to Senator LEAHY's suggestion that a ''system of public prosecutions'' was ''standard'' at the time of the framing of the Constitution, the evidence is clear that private individuals—victims—initiated and pursued the bulk of prosecutions before, during, and for some time after the Constitution Convention.

Let's look, for example, at the research of one scholar, Professor Allen Steinberg, who spent a decade sifting through dusty criminal court records in Philadelphia and wrote a book about his findings. Based on a detailed review of court docket books and other evidence, Professor Steinberg determined that private prosecutions continued in that city through most of the 19th century.

In Professor Steinberg's words, by the mid-19th Century, ''private prosecution had become central to the city's system of criminal law enforcement, so entrenched that it would prove difficult to dislodge. . . .''

Of course, Philadelphia was the city where the Constitution was debated, drafted, and adopted. And for decades it was our new nation's most populous city—and its cultural and legal capital as well.

It is difficult to reconcile the assertion that a ''system of public prosecutions'' was ''standard'' at the time of the Constitution Convention with historical research showing that, in the same city where the Convention was held, private prosecutions—inherited from English common law—continued to be ''standard'' through the mid-19th century.

It is not surprising that the Senator from Vermont would conclude that public prosecution had replaced private prosecution by the late 18th century. A cursory exam of historical documents might lead to such a conclusion, for the simple reason that documents regarding public prosecutors and public prosecutions (what few there were) are easier to find than documents regarding private prosecutions. As Stephanie Dangel has explained in the Yale Law Journal:

> [e]arly studies concentrating on legislation naturally over-emphasized the importance of the public prosecutor, since a private prosecution system inherited from the common law would not appear in legislation. Examinations of prosecutorial practice were cursory and thus skewed. The most readily accessible information relating to criminal prosecutions predictably concerned the exceptional, well publicized cases involving public prosecutors, not the vast majority of mundane cases, involving scant paperwork and handled through the simple procedures of private prosecution . . .

Dangel has summed up recent historical research into the nature of prosecution in the decades leading up to the framing of the Constitution as follows:

> First, private individuals, not government officials, conducted the bulk of prosecution. Second, the primary work of attorneys general and district attorneys consisted on non-prosecutorial duties, with their prosecutorial discretion limited to ending, rather than initiating or conducting, prosecutions.

Regarding the prevalence of private prosecution in the colonies, Dangel noted:

> Seventeenth and eighteenth century English common law viewed a crime as a wrong inflicted upon the victims not as an act against the state. An aggrieved victim, or interested party, would initiate prosecution. After investigation and approval by a justice of the peace and grand jury, a private individual would conduct the prosecution, sometimes with the assistance of counsel. . . . Private parties retained ultimate control, often settling even after grand juries returned indictments. Contemporaneous sources confirm the relative insignificance of public prosecutions in the colonial criminal system. Only five of the first thirteen constitutions mention a state attorney general, and only Connecticut mentions the local prosecutor. Secondary references are similarly rare. Finally, the earliest judicial decision voicing disapproval of private prosecution did not appear until 1849. No decision affirming public prosecutors' virtually unreviewable discretion appeared before 1883.

The historical evidence is clear: Because victims were parties to most criminal prosecutions in the late 18th century, they had basic rights to notice, to be present, and to participate in the proceedings under regular court rules. Today, victims are not parties to criminal prosecutions, and they are often denied these basic rights. Thus, a constitutional victims' rights amendment would restore some of the rights that victims enjoyed at the time the Framers drafted the Constitution and Bill of Rights.

If this historical evidence about prosecutions in the colonies is not enough, I would repeat a point Senator LEAHY