

Spearfish, South Dakota, near the town where this young man signed up to serve his country. This is a dignified and fitting tribute. But there is another memorial to Private First Class Littleton on the other side of the Pacific Ocean, where a small, impoverished colony has blossomed into the Republic of Korea: a peaceful, democratic society that ranks as one of the great economic success stories of the 20th Century. His sacrifice helped make all this possible.

With this statement before the United States Senate, I join in saluting Private First Class Littleton. As we conduct the nation's affairs in this chamber of the United States Capitol, we would do well to remember Private First Class Littleton. In our every deed, let the members of this body bear in mind the lesson of courage, honor, and personal sacrifice offered to us by a 20-year-old man fighting for his country in the darkness, far from home.

FIRESTONE-FORD INVESTIGATION

Mr. SPECTER. Mr. President, I have sought recognition to deal with very serious problems disclosed in hearings yesterday in the Transportation Appropriations Subcommittee. The hearing involved 88 deaths that have resulted from Firestone tires shredding, and a great many Ford vehicles—mostly Ford Explorers—rolling over and resulting in those 88 deaths.

The hearing yesterday produced substantial evidence that ranking officials at Firestone and Ford knew about this problem, but subjected the owners of Ford Explorer vehicles riding on Firestone tires to the risk of death, which did eventuate for 88 people, and to very serious bodily injury for many more. These risks were foisted upon the American traveling public at a time when both Ford and Firestone knew what the problems were, at a time when, in October of 1998, customers in Venezuela had found the problem, and Ford and Firestone were alerted to it, with officials in Venezuela now talking about criminal prosecutions. In August of 1999, the Saudis had their tires replaced, so the people in Saudi Arabia were being protected while U.S. consumers were not being protected.

An internal Ford memorandum on March 12, 1999, considered whether Governmental officials in the United States ought to be notified, and a decision was made not to notify Federal officials. The matter then came into sharp focus in late July of this year, with the Ford executive witness testifying that Ford did not know about the problem in its full import until July 27 when Firestone turned over the information to Federal authorities. There was a representation by the Ford witness—which candidly strains credulity—and Firestone made representations that they did not find out about this problem until they had conducted some extraordinary tests—tests which obviously should have been conducted at a much earlier stage.

Yesterday, I questioned the Ford and Firestone officials on their willingness to turn over all of the records to the Transportation Appropriations Subcommittee, and they said they would; although, as I had said at the time, I thought there ought to be a subpoena issued which made it an obligation. Failure to perform would subject anybody who did not comply with the subpoena to charges of obstruction of justice. When cases of this sort have arisen in the past, there is a tremendous amount of experience that there is reluctance on the part of companies to turn over their documents, and they are found only after the most detailed and excruciating discovery in litigation. So this is a matter where the documents will be the best evidence as to who knew what, when that was known, and what action, if any, was taken.

The tragedy with the Firestone tires and the Ford Explorer rollovers is a matter that is going to have to be determined after very substantial investigation. The witnesses who testified yesterday were Joan Claybrook, President of the Public Citizen Organization, and R. David Pittle, Senior Vice President and Technical Director, Consumers Union. Both of them felt that criminal prosecutions were appropriate, perhaps rising to the level of second degree murder because of a willful disregard or reckless disregard of the safety of others, resulting in death, which is the legal equivalent of malice and which is the basis for a charge as serious as murder in the second degree.

Whether that is applicable to Firestone and Ford remains to be seen. However, we find a situation where the laws of the United States are inadequate to deal with this kind of situation. There is no legislation on the books which establishes a prosecution in these terms.

Back in 1966, the House of Representatives considered similar legislation. I have considered it for some time and have deferred introducing such legislation because it seemed to me that perhaps it was just a little harsh. But with the experience of Ford and Firestone, I do think it is appropriate for the Congress of the United States to consider such legislation.

That is why today I am introducing a bill which would establish criminal sanctions for any person who, in gross deviation from a reasonable standard of care, introduces into interstate commerce a product known by that person to be defective which causes the death or serious bodily injury of any individual, calling for penalties up to 15 years where the requisite malice is shown resulting in death, and up to 5 years where the requisite malice is shown for serious bodily injury.

This is a matter I have studied in considerable detail over many years, having represented defendants in personal injury cases—some plaintiffs in personal injury cases—but, more specifically, as district attorney of Philadelphia seeing the impact and the ef-

fect of criminal prosecutions and seeing to it that people pay attention.

When there are similar monetary awards, it costs the company and it costs the shareholders, but it doesn't do anything to the individuals who make these decisions. Before an individual could be held responsible under my proposed legislation, there would have to be a showing that the person knew there was a defect and that defect subjected a person to death or serious bodily injury.

That kind of knowledge and putting the instrumentality into commerce does constitute gross disregard for the safety or the life of another, which is the equivalent of malice and justifies this kind of a prosecution.

As I noted, this is a subject I have studied for some time. Although the Firestone-Ford issue came up only yesterday, the studies I have undertaken have shown me the desirability of this kind of legislation.

Last year, in *Anderson v. General Motors Company*, 1999 WL 1466627, a Los Angeles Superior Court jury ordered General Motors to pay a record \$4.8 billion in punitive damages when six people were trapped and burned when their Chevrolet Malibu exploded after its fuel tank was ruptured in a rear-end crash. General Motors had made a calculation that it would cost in damages \$2.40 per automobile if they left the defect in existence, but to correct and redesign the fuel system to reduce the fire cost would have been \$8.59 a car. So that cost analysis did constitute actual malice.

That kind of an analysis was very similar to the punitive damages which were awarded in the famous case involving the Ford Pinto, which goes back to a 1981 decision in *Grimshaw v. Ford Motor Company*, 119 Cal. App. 3d 757, where an analysis was made that it would cost some \$49.5 million to pay damages resulting from deaths and injuries contrasted with \$137 million to pay for correcting the automobile.

In this particular case, the punitive damage award was \$125 million, but it was subsequently reduced to \$3.5 million, which frequently happens in punitive damage awards.

In a similar case, *Ginny V. White and Jimmy D. White v. Ford Motor Company*, CV-N-95-279-DWH (PHA), a 3-year-old child was crushed to death under the rear dual wheels of a Ford truck after it rolled suddenly down a grade. Here, Ford had known of the defect and knew how to correct it easily but did not do so. Punitive damages in that case were awarded at \$150 million but have since been reduced to \$69 million.

These cases are illustrative of the kind of headlines punitive damage awards make in the newspapers but how they are very frequently reduced. But again, the punitive damages do not really deal with the executives who make these decisions.

In the case of *Fair v. Ford Motor Company*, Civil Action 88-CI-101, 27

people were killed when a school bus in which they were riding burned after being struck by another vehicle. Punitive damages were upheld in this case where the facts showed that the fuel tank failure was preventable and that Ford had the capacity and the opportunity to prevent it and failed to do so.

In another similar case, *Toyota Motor Company v. Moll*, 438 So. 2d 192 (Fla. App. 1983), a Toyota Corona was struck in the rear, causing its fuel system to rupture and three women were burned to death. The court found malice on the part of Toyota because Toyota knew of the defective design of the fuel system and, in wanton disregard of the safety of the purchasing public, continued to market their 1973 Toyota Corona.

In *Ford Motor Company v. Ammerman*, 705 N.E. 2d 539 (Ind. App. 1999), the Court of Appeals for the Fifth Circuit of Indiana imposed punitive damages, finding malice on the part of Ford, when a Bronco slid sideways and rolled over causing very serious injuries, with the court saying:

"It is apparent to this court that Ford was motivated by profits rather than safety when it put into the stream of commerce a vehicle which it knew was dangerous and defective. Ignoring its own data and advice of its engineers, Ford manufactured a vehicle prone to roll-over accidents in spite of being aware that such accidents result in more serious injuries than any other." 705 N.E. 2d at 562.

There are similar findings in the famous breast implant case, *Hopkins v. Dow Corning*, 33 F.3d 1116 (9th Cir. 1994), where they knew that long studies of implants were needed before the product could be marketed but concealed the information.

Similarly, in the *Dalkon Shield* case, *Tetuan v. A.H. Robins Co.*, 738 P.2d 1210 (Kan. 1987), thousands of women were presented with life-threatening and even fatal illnesses with the Kansas Supreme Court noting that the company deliberately and actively concealed the potential dangers of the product, thereby violating their duty to the public.

In the interest of time, I will summarize very briefly *Batteast v. Wyeth Laboratories, Inc.*, 526 N.E. 2d 428 (Ill. App. 1 Dist. 1988), where punitive damages were awarded where drugs were given to individuals knowing of their dangerous propensity.

Similarly, in the case of *Proctor v. Davis*, 682 N.E. 2d 1203 (Ill. App. 1997), a patient had a retina detachment and blindness following the adverse effects of a drug which were known to the manufacturer but not disclosed.

In the brief time available this afternoon, I have summarized a series of cases which are only representative—where products have been put in interstate commerce, where there was knowledge on the part of individuals who put those products on the market that they would subject the individuals to risk of serious bodily injury or

death, and, when death resulted, they were held liable, with the courts concluding that malice was established by the reckless disregard of the life of another.

When we have such a long sequence of cases, when we have the occasional imposition of punitive damages which are characteristically reduced and not really determinative or therapeutic anyway because it goes only after the shareholders as opposed to the individuals who have the ability to eliminate the problem, it is time there was adequate legislation on the Federal books to deal with this sort of problem.

I repeat, the culpability of Firestone or Ford has not yet been established, but it strains credulity that the key officials, based on what we heard yesterday in the hearing, did not know of these defects, and with the documents already at hand failed to take action to correct them. That is a matter to be determined.

But this legislation, if enacted, will certainly put the officials on notice that they cannot recklessly disregard human life for profits.

I yield the floor.

VICTIMS OF GUN VIOLENCE

Mr. KENNEDY. Mr. President, it has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.

Since Columbine, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will read the names of some of those who have lost their lives to gun violence in the past year, and we will continue to do so every day that the Senate is in session.

In the name of those who died, we will continue this fight. Following are the names of some of the people who were killed by gunfire one year ago today. September 7, 1999: Ignacio Barba, 25, Oakland, CA; Ernest Bolton, 48, Dallas, TX; Steven Celestine, 5, Miami, FL; Fareed J. Chapman, 19, Chicago, IL; Selester Edward, 21, Louisville, KY; Samuel Girouard, 18, Bellingham, WA; Allen Howe, 32, New Orleans, LA; Robert Jenkins, 29, Charlotte, NC; Leo Kidd, 28, Detroit, MI; Alvin Marshall, 45, Pittsburgh, PA; Stacy Stewart, 28, St. Louis, MO; William Thornes, 23, Washington, DC; Darryl Towns, 15, Detroit, MI; Dao Vo, 19, Seattle, WA; Bathsheba Woodall, 23, Philadelphia, PA.

One of the gun violence victims I mentioned was only five years old. Steven Celestine, a little boy from Miami, was shot and killed one year ago today by his own father, as his mother tried to protect him in her arms during an argument between the parents.

We cannot sit back and allow such senseless gun violence to continue. The deaths of this small child and the others I named are a reminder to all of us that we need to enact sensible gun legislation now.

HIGH ENERGY COSTS

Mr. GRASSLEY. Mr. President, I don't know whether other colleagues of mine have spoken today on this issue, but I would be surprised if some have not. I have not had an opportunity to hear what anybody else has said. It is with some dismay that we are, once again, faced this year with very high energy costs. The headline that I have in front of me from the Washington Post for today says, "Oil Prices Hit a Ten-Year High; As Americans Face Costly Winter, U.S. Pressures OPEC on Output."

In that headline, several things are considered: First of all, we have the highest worldwide energy prices since the gulf war, and the war was responsible for the high oil prices at that particular time—not OPEC cutting back oil, not bad U.S. domestic energy policy. The other thing that hits us is that the consumer is going to end up paying for this. Both points highlight that this administration has been promising us an energy plan to deal with this crisis situation. Let me be clear on that—an energy plan not for the future but to deal with the immediate crisis.

I had an opportunity to write a letter to the administration earlier this summer asking them to put forth a plan to meet potential shortages of fuel oil, propane gas, and natural gas—all used in home heating—so the health of our seniors is not threatened when we get cold weather. I have not had a response to that letter. Nothing of substance has come from my request.

I had a chance during the month of July, when Senator LUGAR had a hearing before the Agriculture Committee with Secretary of Energy Richardson, to ask questions of Secretary Richardson, and put forth the necessity of his coming forward with just such a plan. Yet nothing has been forthcoming. I should say nothing but what the story in the Post reminds us of—that this Administration's energy policy seems to consist of either the President of the United States or the Energy Secretary getting down on hands and knees to OPEC countries—and they tend to emphasize dealing with the Arab nations on this issue—to please pump more oil, produce more oil, send more oil to the industrialized parts of the world, particularly the United States. That is all we are seeing at this point. That is all we saw last spring from this administration to get the price of energy down—begging the OPEC nations, and particularly the Arab oil-producing nations, to send more oil. That is their response to the crisis.

This prompts me to tell my colleagues what I hope I will be able to do tonight as we discuss the energy and water bill. Since I have not had a response to my request to the Energy Secretary when he was before the Senate Agriculture Committee, and since I have not had a response to my letter to the President, as well as a letter to the Energy Secretary, I will be offering an amendment that will ask the administration to get this plan that we have