INTERPOL issued a Red Notice asking member states to help bring him to justice.

Today, Mr. Taylor remains beyond the reach of the court. He is in Nigeria—shielded by that government. To make matters worse, Taylor continues to work to destabilize parts of West Africa. The State Department says it will not pressure Nigeria to turn Taylor over to the court.

This is completely unacceptable. Taylor is under indictment by a UN-backed court. He continues to destabilize parts of West Africa. We know where he is. The United States needs to act and it needs to act now.

Yesterday, Senator GREGG and I—along with 5 other Senators—sent a letter to the State Department urging immediate action to get Taylor to the court. It is time for the United States to do the right thing. It is time for Taylor to come before the court.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1805, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1805) to prohibit civil liability actions from being brought or continuing against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

Pending:

Hatch (for Campbell) amendment No. 2623, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

Kennedy amendment No. 2619, to expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor.

Craig (for Frist/Craig) amendment No. 2625, to regulate the sale and possession of armor piercing ammunition.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, today we begin the third day of debate on this important bill, S. 1805, addressing the problem that should outrage many Members of this Senate and by the cosponsorship we have at this moment, I believe that is the case. That outrage should be against the abuse of our courts by those who cannot change public policy through representative government but instead are attempting an end run around the State and Federal legislatures to impose their political agenda on the people of this country through litigation. In this case, their target is the one consumer product whose access is protected by nothing less than the U.S. Constitution itself; that is, firearms.

The bill, the Protection of Lawful Commerce In Arms Act, we are talking about today and debated thoroughly yesterday and the day before, would stop what I call junk lawsuits that attempt to pin the blame and the cost of criminal misbehavior on business men and women who are following the law and selling a legal product.

This bill responds to a series of lawsuits filed primarily by municipalities advancing a variety of theories as to why gun manufacturers and sellers should be liable for the cost of injuries caused by people over whom they have no control, criminals who use firearms illegally.

This is a bipartisan bill. Let me acknowledge my Democrat sponsor, MAX BAUCUS of Montana, for his work on this initiative. Many others have helped advance it, as well as the leaders and the assistant leaders on both sides. By that demonstration, this bill is truly a bipartisan effort. The cosponsors we have to date are substantial. With myself and Senator BAUCUS included, we now have 54 cosponsors.

We introduced the bill nearly a year ago, last March, with more than half of the Senate as cosponsors at that time: Senator ALEXANDER, Senator ALLARD, Senator ALLEN, Senator BENNETT, Senator BOND, Senator BREAUX, Senator BROWNBACK, Senator BUNNING, Senator BURNS, Senator CAMPBELL, Senator CHAMBLISS, Senator COCHRAN, Senator COLEMAN, Senator COLLINS, Senator CORNYN, Senator CRAPO, Senator DOLE, Senator DOMENICI, Senator DORGAN, Senator ENSIGN, Senator ENZI, Senator GRAHAM of South Carolina, Senator GRASSLEY, Senator GREGG, Senator HAGEL, Senator HATCH, Senator HUTCHISON, Senator INHOFE, Senator JOHNSON, Senator KYL, Senator LANDRIEU, Senator LINCOLN, Senator LOTT, Senator MILLER, Senator MURKOWSKI, Senator NELSON of Nebraska, Senator NICKLES, Senator ROBERTS, Senator SANTORUM, Senator SESSIONS, Senator SHELBY, Senator SNOWE, Senator SMITH, Senator SPECTER, Senator STEVENS, Senator SUNUNU, Senator TALENT, Senator THOMAS, and Senator VOINOVICH.

This range of cosponsorship reflects extraordinarily widespread support that crosses party and geographical lines and covers the spectrum of political ideologies that is clearly always represented in the Senate. It demonstrates a strong commitment by a majority of this body to take a stand against a trend of predatory litigation that impugns the integrity of our courts, threatens a domestic industry that is critical to our Nation's defense, jeopardizes hundreds of thousands of good-paying jobs, and puts at risk access Americans have to a legal product used for hundreds of years across this Nation for lawful purposes such as recreation and defense.

We have been joined in this effort by a host of supporting organizations representing literally tens of millions of Americans from all walks of life. I thank them all for their effort to help pass the Protection of Lawful Commerce in Arms Act. I invite my colleagues to consider a broad cross section of American citizens represented by such diverse organizations as unions, including United Mine Workers of America, United Steelworkers of America, United Automobile, Aerospace and Agricultural Implement Workers of America, the locals of the International Association of Machinists and Aerospace Workers; business groups, including the U.S. Chamber of Commerce, the Alliance of America's Insurers, the National Association of Wholesale Distributors, the National Association of Manufacturers, and the American Tort Reform Association, the National Rifle Association; and more than 30 different sportsmen's groups and organizations whose members are engaged in the conservation and hunting and the shooting sports industry in all 50 States across this great Nation.

I have used the term ''junk lawsuits,'' and I want to make it very clear, because this was part of our discussion yesterday, to anyone listening to this debate, I do not mean any disrespect to the victims of gun violence in any way who might be involved or brought into these actions by other groups.

Although their names are sometimes used in the lawsuits, they are not the people who came up with the notion of going after the industry instead of going after criminals responsible for their injuries or for their losses. The notion originated with some bureaucrats and some anti-gun advocates, and the lawyers they were with.

Victims, including their families and communities, deserve our support and our compassion, not to mention our insistence, on the aggressive enforcement of the laws that provide punishment for the criminals who have caused harm to them.

There are adequate laws out there now, and we constantly encourage our courts to go after the criminal, to lock them up, and to toss the key away when they are involved in gun violence and when they use a gun in the commission of a crime. If those laws need to be toughened, our law enforcement efforts improved, then the proper source of help is the legislatures and the governments, not the courts, and certainly not law-abiding businessmen and workers who have nothing to do with their victimization. No.

The reason there are junk lawsuits is that they do not target the responsible party for those terrible crimes. They are predatory litigation looking for a convenient deep pocket to pay for somebody else's criminal behavior. Let me repeat that. I define junk lawsuits as predatory litigation looking for a convenient deep pocket to pay for somebody else's criminal behavior.

They are junk lawsuits by any definition of the word because they are driven by political motives to hobble or bankrupt the gun industry as a way to control guns, not to control crime.

By definition, the legislation we are considering today aims to stop lawsuits that are trying to force the gun industry into paying for the crimes of people over whom they have absolutely no control.

Let me stop a minute right here and make sure everyone understands the very limited nature of this bill. I have expressed it. I have explained it. I have talked about it. I have asked all of our Members to read S. 1805.

What this bill does not do is as important as what it does. This is not a gun industry immunity bill. This bill does not create a legal shield for anyone who manufacturers or sells firearms. It does not protect members of the gun industry from every lawsuit or legal action that could be filed against them. It does not prevent them from being sued for their own misconduct.

Let me repeat that. It does not prevent them—''them,'' the gun industry—from being sued for their own misconduct. This bill only stops one extremely narrow category of lawsuits: lawsuits that attempt to force the gun industry to pay for the crimes of third parties over whom they have no control.

We have tried to make that limitation clear in the bill in several ways. For instance, section 2 of the bill says its No. 1 purpose is:

> To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products for the harm caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

We have also tried to make the bill's narrow purpose clear by defining the kind of lawsuit that is prohibited. Section 4 defines the one and only kind of lawsuit prohibited by this bill. Let me repeat that. Section 4 defines the one and only kind of lawsuit prohibited by this bill. Let me quote:

> a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party . . .

We have also tried to make the narrow scope of the bill clear by listing specific kinds of lawsuits that are not prohibited. Section 4 says they include: actions for harm resulting from defects in the firearm itself when used as intended—that is product liability suits—actions based on the negligence or negligent entrustment by the gun manufacturer, seller, or trade association; actions for breach of contract by those parties.

Furthermore, if someone has been convicted under title 18, section 924(h), in plain English, that means someone who has been convicted of transferring a firearm knowing that the gun will be used to commit a crime of violence or drug trafficking, that individual is not shielded from a civil lawsuit by someone harmed by the firearms transfer.

Finally, the bill does not protect any member of the gun industry from lawsuits for harm resulting from any illegal action they have committed. Let me repeat that. If a gun dealer, manufacturer, or trade association violates the law, this bill is not going to protect them from a lawsuit brought against them for harm resulting from that misconduct.

What I have listed for my colleagues' convenience is all spelled out in section 4 of the bill. We have been through that section several times over the last several days. Again, this is a rundown of the universe of lawsuits against members of the firearms industry that would not be stopped—I repeat, not be stopped—by this narrowly targeted bill.

What all these nonprohibited lawsuits have in common is that they involve actual misconduct or wrongful actions of some sort by a gun manufacturer, seller, or trade association. Whether you support or oppose the bill, I think we can all agree that individuals should not be shielded from the legal repercussions of their own lawless acts. The Protection of Lawful Commerce in Arms Act expressly does not provide such a shield.

I am going to repeat this again because some opponents continue to mischaracterize the bill. This is not a gun industry immunity bill. It prohibits one kind of lawsuit: a suit trying to fix the blame of a third party's criminal acts or misdeeds on the manufacturer or seller of the firearm used in that crime.

Even though this is a narrowly focused bill, it is an extremely important bill. The junk lawsuits we are addressing today would reverse a longstanding legal principle in this country that manufacturers of products are not responsible for the criminal—I repeat, the criminal—misuse of their products.

You do not have to be a lawyer to know that runaway juries and activist judges can turn common sense on its head in specific cases, setting precedents that have had dramatic repercussions. The potential repercussions here could be devastating.

If a gun manufacturer is held liable for the harm done by a criminal for misusing a gun, then there is nothing to stop the manufacturers of any products used in crimes from having to bear the cost of those crimes. Since when is this country going to step to that level? So automobile manufacturers will have to take the blame for the death of a bystander who gets in the way of a drunk driver? Yes, there are some who would suggest that. The local hardware store will be held responsible for a kitchen knife it sold that was later used in the crime of rape? A baseball team, whose bat was used to bludgeon a victim, will have to pay for the cost of that crime?

Now, does that sound silly to the average listener? It may. But those kinds of charges are being brought today because this country does not want to hold its criminal element accountable, in many instances.

It is not just unfair to hold law-abiding businesses and workers responsible for criminal misconduct with the products they make and sell, but it would also bring havoc to our marketplaces.

Hold on to your wallets, America, because those businesses that don't actually go into bankruptcy will have to pass their costs through to the consumer. My guess is that many in the anti-gun community would say: That is just fine; if we cannot bankrupt the business, then let's price the product out of the range of the average law-abiding citizen who would like to afford a gun. To the criminal element that probably steals for a living, they may have the kind of funds to buy that gun in the black market at any price, and oftentimes they do.

Even without being successful, this litigation imposes enormous financial burdens on the gun industry. It is important to keep in mind that the deep pocket of the gun industry isn't all that deep. In hearings on the House side, experts testified that the firearms industry, taken together—I mean put them all together, look at their assets, their income—would not collectively equal one Fortune 500 company.

Last year it was estimated—and we can only estimate because the costs of litigation are confidential business information—that these baseless lawsuits have cost the firearms industry more than $100 million. Furthermore, don't think these companies can just pass the costs off to their insurer because in nearly every case, insurance carriers have denied coverage.

I quote from what a Massachusetts union had to say about the issue, the union whose members work at the Savage Arms Company in Westfield, MA:

> Today, we have 160 members from Savage workforce. By comparison, about a dozen years ago, we had over 500 Savage workers who were members of our Local. . . .

Savage Arms is not alone. Other businesses have closed their doors, and the jobs have not been lost because of the sheer cost, the jobs have been lost because of the sheer cost of fighting these junk lawsuits.

The impact on innocent workers and communities is not the only potential repercussion of these lawsuits. If U.S. firearms manufacturers close their doors, where will our military and peace officers have to go to obtain their guns? Do we then have to start a government gun manufacturing company? I doubt that the efficiencies and the qualities and the costs would be the same. Surely we don't want foreign suppliers to control our national defense and community law enforcement, not to mention the ability of individual American citizens to exercise their second amendment protected rights through accessing firearms for self-defense, recreation, and other lawful purposes.

For all these reasons, more than 30 States have laws on the books offering some protection for the gun industry from these extraordinary suits. Support has steadily grown in Congress for taking action at the Federal level. This would not be the first time Congress had acted to prevent this kind of threat to industries. Some would suggest it is unprecedented, it has never happened before.

Let me give an example. There are a number of Members in this Chamber who were serving when the Congress passed the General Aviation Revitalization Act barring product liability suits against manufacturers of planes that were more than 18 years old. Just a couple of years ago, in the Homeland Security Act, Congress placed limits on the liability of a half a dozen industries, including manufacturers of smallpox vaccine and sellers of antiterrorist technologies. These are only a couple examples out of a significant list of Federal tort reform measures that have been enacted over the years when Congress perceived a need to protect a specific sector of our economy or defense interests from burdensome, unfair, and/or frivolous litigation.

I could go on. I have said enough for the moment. My colleagues are here. Senator REED, who is handling the opposition, has statements to make. I believe Senator LEVIN has an amendment he would like to offer. But clearly, this is an issue whose time has come. It is time to step out and say: We are not going to suggest to law-abiding citizens that you ought to bear the brunt of the criminal action. That is not the case. Law-abiding citizens already bear a substantial amount of that brunt. Taxpayers usually pick up most of the bills in these tragic instances. That is why enforcing the law, putting those who misuse firearms behind bars, is what it really ought to be all about.

But for social purposes, for political purposes, for whatever reason that the anti-gun community has not been able to legislate either on the floor of the Senate, on the floor of the House, or in State legislatures across the Nation, they now run to the court system.

We suggest they can't do that, nor should they do that. We want to protect the victims. We certainly want to protect them from the criminal element. Much legislation is talked about now for the victim and victims' rights. I support all of those kinds of things. But why should the law-abiding manufacturer of any product in this country, that is quality but simply misused and that misuse takes the life of a third party—why should that manufacturer be responsible? We already have a broad range of areas in which that responsibility is described and in which the consumer is protected if that responsibility is not followed by the manufacturer or those who sell that product in the marketplace. That is an arena that is well litigated today. That is an arena in tort law that is well spelled out.

Here today and in past lawsuits, we have had great imagination that tries to cook up the issue of negligence or to redefine it or shape it in a way that Americans have said and that tort law has said for centuries: You shall not go there; you cannot go there.

Judges are saying that today and have said it consistently in these kinds of lawsuits. That doesn't stop the lawsuits from coming. That does not stop these lawsuits from draining hundreds of millions of dollars out of a law-abiding, responsible commercial and manufacturer entities.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Rhode Island.

Mr. REED. Madam President, the legislation before us can't be all things. It can't be an effective barrier against litigation to protect the gun industry and yet a way to protect the legitimate rights of citizens who have been harmed by guns.

In fact, it is not both; it is one of them. It is carefully, cleverly worded legislation to immunize the gun industry—dealers, manufacturers, and the National Rifle Association—from any type of liability with respect to guns, virtually.

There are perhaps minor exceptions, but the cases we see before us today—the case of the DC snipers, the case of two police officers in New Jersey—would be barred. These cases have already been filed. In fact, one of the sweeping aspects of this legislation is, it doesn't attempt to set the rules prospectively, to say as we go forward these cases would not be heard by the courts. It literally walks in and tells people who have filed cases, cases that have survived summary judgment motions already by State court judges: You are out of court.

This is sweeping, and it is unprecedented. It deals a serious blow to citizens throughout this country while enhancing dramatically the legal protections for the gun industry.

Consistently the proponents say: You can't hold someone responsible for the criminal actions of another. That is not what these cases are about. These cases suggest, declare, allege that an individual failed in his or her duties, his or her responsibility to do what is necessary, responsibility in the conduct of their activity—in the case of gun dealers, to take sensible, reasonable precautions, the standard of care that a business person would use, the standard of care that any business person must use in the United States.

The allegation is they fail to do that. The evidence is overwhelming there was no standard of adequate care. Here is a gun dealer who could not account for 238 weapons, who claims a teenager—he didn't realize it at the time—must have walked in and shoplifted an automatic weapon, a sniper weapon, and carried it away undetected. In fact, this weapon was missing without his knowledge for weeks and months, undetermined.

Is that the standard of care we would expect a businessperson to exercise, particularly one who deals in products that can kill? I don't think so. That is what this is about. This is not about punishing people for the criminal activity of others. It is about holding individuals up to a standard of conduct we expect from anyone. There are various examples. Some say, my God, if the hardware store sells a knife to somebody and it is used in a crime, they are not responsible. If you have a car dealer who leaves the keys in the cars and has no security, and a teenager takes that car and gets into an accident and harms someone, certainly I think the parents of the individuals harmed or that individual could legitimately go to court and say this dealer didn't meet the rational standard of care of anybody in the automobile industry. They have to secure these cars. You cannot make them available to people and teenagers who might steal them. That is common sense.

That would apply to the automobile dealer, but if this legislation passes, common sense doesn't apply to the gun industry in this country. In fact, this is really a license for irresponsibility we are considering today. As I said before, when they get the Federal firearms license, if this bill passes, you can get another license. You are being irresponsible. That is not to suggest all dealers are irresponsible, but many are.

We talk about junk lawsuits. It is not a junk lawsuit when your husband has been shot while sitting in the bus waiting to go to work. I don't think the Johnson family volunteered to be part of this social experiment. I think any suggestion to that effect is offensive. They have been harmed grievously. A wife has lost her husband; children have lost their father. Their livelihoods are in question. They seek redress, as anyone would. That is not a junk suit. That is someone who says I have been harmed by the negligence of someone and that person should pay.

The suggestion that this suit is in response to some avalanche of lawsuits that is devastating the firearm manufacturers is without any foundation. The industry is so stressed they have raised $100 million to protect themselves, not just legally, but also in terms of controlling the documents and communications between themselves and their attorneys. This is not an industry that seems to be without resources. But I can tell you many of the families of victims of the Washington snipers are looking forward to a lifetime where they might have the resources to send children to college and do the things they would have been able to do if their spouse was still alive. The industry, it has been suggested, is being pushed into bankruptcy because of these frivolous junk lawsuits.

Well, Savage Arms was mentioned. It is a company that was founded in 1894. It has provided firearms for now over a century. It went bankrupt in 1988 because, according to the CEO, Ron

Coburn: ''We had too many products, each of them in dire need of re-engineering.''

There is no suggestion they were being intimidated by these fancy political science lawsuits. Under the bankruptcy plan, Coburn reduced the product line and fired 400 employees. There has been contraction in this industry, as in every manufacturing industry, but it is not as a result of these suits.

Since that time, Savage has done remarkably well. They have taken the lead in many different aspects. They are a responsible company. They were honored as manufacturer of the year and in many other aspects. It has been suggested this company, in effect, is overwhelmed by these lawsuits. I don't think that is the case. I think they make business judgments as any business—based upon products, demand, and all these things.

We are not facing a situation where we would be without the benefit of gun manufacturers in the United States because of these lawsuits. The suggestion that this somehow would interfere with our national security is outlandish. The suggestion we would then have to turn to foreign suppliers for our military is rather odd. Indeed, today, many of the suppliers for our national defense are the subsidiaries of foreign companies. Browning, Winchester and Fabrique Nationale, which supplies M–16 A–4 assault rifles and the M–2 49G squad automatic weapon, are subsidiaries of Herstal, a Belgium firm. The Pentagon contracted with Heckler and Koch, a German firm, to help develop the next generation of industry weapons.

Clearly, the Pentagon doesn't feel American manufacturers are so distressed that they have to go overseas. They are going overseas because they are looking for superior weapons. They are dealing with American subsidiaries of foreign companies. This is not about preserving the defense and the ability to access weapons. This is about protecting one industry from the legal responsibility to exercise caution any individual must exercise—one industry, when all industries must do that, or indeed the vast majority. This is not about protecting the integrity of the courts. What does it say to the integrity of the courts of West Virginia when a judge already found that a suit involving these two New Jersey police officers should proceed, when we say, no, you are wrong, this case is out the door? This is not about protecting courts. It is about protecting an industry.

We have been asked to look closely at the law. We have to look closely at the law in terms of the cases we know are pending because, frankly, we could hypothesize about cases in the future. This is the law:

A qualified civil liability action may not be brought in any Federal or State court.

That is not a particularly narrow excerpt. It is not a listing of those exemptions the gun industry made available themselves. This is broad and sweeping, barring the doors of these types of suits. In addition to that—talking about overreaching, dismissal of pending actions—it is rare indeed that this Congress could go in and tell plaintiffs who have a case in progress you are out the door, you cannot proceed. This is extraordinary, to me.

A qualified civil liability action that is pending on the date of enactment of this act shall be immediately dismissed by the court.

Not reviewed but dismissed. I think, again, that is extraordinarily broad and sweeping. The real aspect of this legislation goes to the definition on the next chart.

A qualified civil liability action means a civil action brought by any person against a manufacturer or a seller of a qualified product or trade association, for damages resulting from the criminal or unlawful misuse of the qualified product by the person or a third party, but shall not include—

So it is any action, again not narrowly constrained, carefully worded legislation.

Then there are several exemptions. Let me point out, if this were a narrowly crafted piece of legislation, the exemption I think should apply to the gun industry, not to the litigants. It should be those safe harbors where if they do certain things, they are protected, if they exercise due care. That is the way we want to draft narrowly worded legislation. And this is quite to the contrary.

The burden is now on the individual to show that they qualify to bring their case to court, not on the companies to show that their case is somehow outside the normal range of negligent actions.

The key provision, in terms of the sniper case—and I will talk about the sniper case in a moment—is sections ii and iii. Madam President, ii is ''actions brought against a seller for ''negligent entrustment'' or ''negligence per se.''

Negligent entrustment is a defined term in the legislation. It means:

. . . the supplying of a qualified product by a seller for use by another person when the seller knows, or should know, the person to whom the product is supplied to is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

The key element is ''know.'' For example, in the sniper case, the dealer claims he did not know that the weapon was missing. It has been acknowledged by the sniper that the weapon was shoplifted. This theory will not provide that case to go forward.

''Negligence per se,'' again, is an element of knowledge which does not seem to exist within the facts as we know them about the Bull's Eye situation. By the way, it has been abrogated as a theory of law in Washington State which would be an appropriate forum for the trial, or at least for consideration. That doesn't work.

The next section is actions in which a manufacturer or seller of a qualified product who violated a State or Federal statute and, quite importantly, that violation was a proximate cause of the harm.

In the case of the sniper shootings, literally it would have to be shown that the individual gun dealer at Bull's Eye knew the particular weapon was missing more than 48 hours before he was confronted by the ATF and that he failed to report it and, as a result, the sniper using that weapon inflicted the harm. But, of course, the facts suggest otherwise. The weapon was shoplifted. The individual claimed he did not know it was missing at all.

All of these carefully worded exceptions do not provide relief for individual plaintiffs. They do not provide it for the plaintiffs in the case of the snipers. They do not provide relief in the case of the two police officers in New Jersey. Yesterday, we had an opportunity to correct that, just a small correction that would allow for these situations, and we failed to do that.

This legislation is designed with one purpose: to immunize the gun industry. I think it is unfortunate, it is unprecedented, and it leads to the conclusion that we are essentially encouraging the kind of reckless behavior, the kind of irresponsible behavior which is not the norm, but it is certainly present and, indeed, it is present in the context that firearms pose a particular danger to the community.

We talked about Bull's Eye Shooter Supply in Tacoma, WA, over 238 weapons missing. You are not supposed to have any weapons missing.

Then there are the situations, for example, of Buckner Enterprises, Pro Guns and Sporting Goods, D&D Discount, Hock Shop, Julie's Pawn, Kent Arms, Northwest Shooters, Woodstove Supply, and Steve's Guns and Archery, all in Michigan.

Over a 4-month period, an undercover State trooper and a 20-year-old convicted felon traveled to 14 firearms retailers and attempted to make a straw purchase. The eight stores I mentioned above agreed to make the straw deal—irresponsible and reckless and, under this legislation, perhaps invulnerable to a suit by someone who might have been hurt as a result of the potential straw sales.

Bob's Gunshop, Bristol, PA, repeatedly sold firearms to convicted felons and out-of-State residents, including a 9 mm Taurus sold to a New Jersey convicted felon. The owners of the store counseled criminals and out-of-State residents to find a local resident to complete the background check.

Is that irresponsible? Yes. Is that against the law? Perhaps not.

It goes on and on. One gun store with which I am intrigued is Illinois Gun Works in Chicago, IL. John ''No Nose'' DiFronzo, a reputed mobster, owns the property where Illinois Gun works is located. Illinois Gun Works is one of the leading suppliers of crime guns to local criminals. This is from the Chicago Sun Times.

There are gun dealers out there who are acting irresponsibly and negligently. They will escape liability if this legislation passes. There are manufacturers that are not policing the

ranks of their dealers effectively enough who continue to sell to dealers such as these, who continue to report, as Bushmaster, the company that manufactured the sniper weapon, reported in regard to Bull's Eye. They are a good company. Even after all of this, they will escape liability.

We are in an extraordinarily important moment. Will we extend this unprecedented protection to an industry, will we signal to an industry that they can be irresponsible, they can be negligent? That is what we are talking about today.

I know my colleague, Senator LEVIN, is here to offer an amendment. Let me ask that he be allowed to do that. I retain my time for additional comments later.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. CRAIG. Madam President, may I briefly say, I think the Senator is here for the offering of an amendment, and then I believe Senator WARNER would like to follow him in the offering of an amendment. If there is no objection, I ask unanimous consent that be the procedure.

Mr. LEVIN. Reserving the right to object, it is my understanding the Senator from Virginia wants to offer an amendment.

Mr. WARNER. Following the Senator from Michigan, that is correct.

Mr. LEVIN. Madam President, I ask the Senator from Virginia, is it a second-degree amendment?

Mr. WARNER. Madam President, no, it is a freestanding amendment in no way related to the amendment of my distinguished colleague from Michigan.

Mr. LEVIN. I would agree to that providing—

Mr. CRAIG. Let me clarify—

Mr. LEVIN. I want to make sure we get a vote on my amendment. This is what this is all about. We might as well get this out in the open as to whether or not there will be votes that will be agreed to on the amendments that are offered. The unanimous consent agreement talked about amendments being offered today and Monday. The Senator from Idaho, I think, as well as I believe the Senator from Nevada, talked about votes on these amendments, but it is not clear in the UC that the amendments offered would be voted upon.

I do not want to lose the regular order that my amendment would be disposed of by agreeing to a unanimous consent agreement that my good friend from Virginia would then come next. That is the issue, I tell my good friend from Idaho.

Mr. CRAIG. If the Senator will yield.

Mr. LEVIN. I will be happy to yield.

Mr. CRAIG. It is our belief, it is my purpose today to disallow any votes from occurring. There will be no votes today.

Mr. LEVIN. Of course.

Mr. CRAIG. On any action. The Senator can offer his amendment. We have just seen it. Senator REED and I will review it over the weekend, or our staffs will. I think that is fair and appropriate. Because the amendment of the Senator from Virginia is not in the second degree, it is my understanding the amendment of the Senator from Michigan would have to be set aside for the purpose of offering the amendment by the Senator from Virginia.

Mr. LEVIN. I would then offer—Madam President, do I have the floor?

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I then suggest the amendment in a unanimous consent request, that my amendment again be the regular order first thing on Monday. The reason for this is that it is important to assure that there be votes on these amendments. I do not know what the intention of the Senator from Idaho is relative to——

Mr. CRAIG. I object to that unanimous consent. There may be other amendments offered today by other parties.

Mr. LEVIN. I have no objection, of course, to that, but my question to the Senator from Idaho is, is it the intention of the Senator from Idaho that there be votes on amendments that are offered on Monday?

Mr. CRAIG. I believe the leadership on both sides intends for there to be votes, or a vote on an amendment, but I cannot tell the Senator what that amendment will be. I object to a specific amendment at this time.

Mr. LEVIN. Then I would have to object because otherwise I am no longer the regular order.

The PRESIDING OFFICER. The objection is heard.

Mr. WARNER. Might I seek a clarification from the distinguished floor manager?

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I am happy to yield for a question without losing my right to the floor.

Mr. WARNER. Well, I do not seek to take the floor, but if the Senator carried out his objection to the full meaning, it would prohibit any amendments coming up today unless the Senator agreed to laying his amendment aside so that another amendment could come up. Is that the desire of the Senator?

Mr. LEVIN. Not at all. My desire is that I not lose my opportunity to have a vote on my amendment.

I do not want a vote today. Let's be very clear on this. When the operating UC was entered into, it was my understanding that amendments would be allowed to be offered today and Monday. It was also my understanding that there was an intention that that meant those amendments would be voted on at some point—not today but at some point. If there is any doubt that that is the intention of the leadership or of the floor managers, to allow votes on amendments that are offered today, the only way I can come close to having assurance that there will be a vote on my amendment at some point will be to modify any UC to agree to set aside my amendment, which will be fine, but then make it a part of the UC that my amendment then be the amendment that is in order on Monday, because otherwise I am weakening the position I have.

Mr. WARNER. Madam President, there is no intention of this Senator to weaken. As a matter of fact, I intend to vote in favor of the Senator's amendment, subject to a colloquy we will have to clarify a question I have in my mind. But the Senate must go forward today on amendments. I am trying to figure out what is the procedure by which we do it so that my colleague from Michigan is protected.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I have no objection to yielding the floor for an answer to that question, without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Certainly the explanation of the Senator as to what leadership proposed in the unanimous consent request, that amendments could be offered today and Monday, is accurate. But the unanimous consent request guaranteed votes only to those amendments that were within the unanimous consent request. I am not today going to allow that unanimous consent request to be amended for the purpose of stacking up a variety of votes. I am willing to look at that on Monday. I have not yet seen the Senator's amendment. We just received it. We are reviewing it now. There may be other amendments I want to review with staff over the weekend.

So I renew my objection to allowing the Senator to become in order again. We have an amendment that we did not get to last night, and that is Senator BINGAMAN's amendment that was in order under the unanimous consent agreement. The hour was late and most were wanting to go home. The Senator was kind enough to put that vote over. It is my understanding that that will be at least one amendment that could be voted on, because it is entitled to be voted on within the unanimous consent agreement, late Monday afternoon.

Mr. LEVIN. I thank my good friend from Idaho.

AMENDMENT NO. 2631

Mr. LEVIN. Madam President, I send my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant Journal clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 2631:

(Purpose: To exempt any civil action against a person from the provisions of the bill if the gross negligence or reckless conduct of the person proximately caused death or injury)

On page 11, after line 19, add the following:

SEC. 5. GROSS NEGLIGENCE OR RECKLESS CONDUCT.

(a) IN GENERAL.—None of the provisions in the Act shall be construed to prohibit a civil liability action from being brought or continued against a person if that person's own gross negligence or reckless conduct was a proximate cause of death or injury.

(b) DEFINITIONS.—As used in this section—

(1) the term ''gross negligence'' has the meaning given the term in subsection (b)(7) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(7)); and

(2) the term ''reckless'' has the meaning given the term in the application notes under section 2A1.4 of the Federal Sentencing Guidelines Manual.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, let us try to sort this out so that the Senator from Virginia is not left out.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Mr. CRAIG. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. CRAIG. Madam President, let me place a unanimous consent request to facilitate actions of the two Senators on the floor. I ask unanimous consent the Levin amendment be temporarily set aside for the purpose of allowing the Senator from Virginia to offer his amendment. Once that amendment is offered and discussed, the Warner amendment would then be set aside for the purpose of returning to the Levin amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Do I understand, then, that the Levin amendment would continue to be the regular order under that unanimous consent?

Mr. WARNER. I believe that is correct, yes.

The PRESIDING OFFICER. It would be the pending question.

Mr. LEVIN. I thank the Senator from Idaho. It is fine with me.

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

Mr. CRAIG. I thank the Senator for his cooperation and turn to the Senator from Virginia.

AMENDMENT NO. 2624

Mr. WARNER. I thank my colleagues. I ask that amendment No. 2624 be the pending business.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior Journal clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 2624.

Mr. WARNER. I ask unanimous consent the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. WARNER. Madam President, I want to make it eminently clear that I desire in every way to cooperate with the joint leadership which, in a bipartisan way, has indicated their desire, together with expressions of the President, that this bill move forward. This is not a dilatory tactic on my part, nor is it to be construed in any way as a political tactic. The subject of this amendment simply is a very heartfelt, personal matter for me.

Each of us counts our joys and benefits through life. I was blessed with two very strong and wonderful parents. My father devoted his life to the medical profession. He served in World War I as a very young doctor in the trenches. He returned a decorated soldier, and established his practice as a surgeon. He concluded a lifetime of total dedication to the profession of medicine, his patients, and the healing of those who have the misfortune of illnesses and other diseases. It is for that reason I bring up this amendment for consideration in the Senate. In brief, this amendment states that if the Senate believes certain protections from lawsuits should be afforded to the gun industry, then certain protections should be likewise afforded to the medical profession. It is as simple as that.

Earlier this week, we dealt with a similar piece of legislation. But this amendment differs in the sense that I have purposely removed any reference to insurance companies or to those companies engaged in the manufacture of healing drugs. I have done this to point out with absolute clarity in the minds of all Senators that if the underlying bill does move forward, then should comparable fair treatment be extended to the medical profession that serves every single American.

The gun industry has a narrow following, in terms of those served under this bill. I don't say that with any disrespect. I, throughout my life, have owned and enjoyed guns. My father gave me my first gun when I was 9 years old, and I have a modest collection to this day. I enjoy the fields and the streams. I pride myself as being a hunter and an outdoorsman. In no way, do I make any personal affront against those who similarly follow the joys of the outdoors.

But, I believe it is essential that if this mighty institution of the Senate move forward with the underlying bill, they carry with it an amendment which accords the same protections to the medical profession, whether it is an emergency room or the doctor's office.

With that in mind, I hope my colleagues look upon my effort as one of purity of heart, and not for political reason. I have no reason to try to impede the underlying bill, but I simply want to give the medical profession such benefits as the Senate is now contemplating in giving to a very narrow segment of our industry; namely, the gun industry and the gun dealers.

I rise today to offer an amendment to address the issue of a form of tort reform. Today the Senate is debating tort reform for the gun industry. I wish to take a few minutes to raise the issue of tort reform with regard to another industry—the health care profession.

I have indicated my father's lifework was in medicine. I had often thought as a young man to pursue that profession. But without getting too personal about this, I served briefly in World War II in the Navy. My father died just months after I returned home. I think had he lived I might well have followed in his profession. But nevertheless, I went on to law school, and had a modest career in the practice of law and in one thing and another. And here I am today, proud to represent my great State in the Senate.

Soon, the Senate will vote on S. 1805, legislation to provide certain legal protections to the gun industry—legal protections which are denied almost across the board to almost every other industry in the private sector, and certainly the medical profession.

It is a very selective piece of legislation for a very selective group. Proponents have argued this legislation is necessary because lawsuits are driving gun dealers and gun manufacturers out of business.

It is very simple. The same thing is happening to the medical profession. Simply stated, the same situation, although far more serious in my judgment and in the judgment of others, is happening to the medical profession. Doctors, nurses, and other health care professionals are leaving the practice of medicine due to the astronomical cost of malpractice insurance, frivolous lawsuits, and what is regarded as runaway jury verdicts where awards, by any standard of fairness, far exceed the damages which some may have suffered as a consequence of receiving medical attention.

In my view, if we are going to be protecting the gun industry from lawsuits, we at least ought to protect the medical profession. We have all heard the real stories from doctors about the rapidly increasing cost of medical malpractice insurance. Some States' malpractice insurance premiums have increased as much as 75 percent in a single year.

As a result, the fact is these doctors, unable to afford ever increasing premiums, are leaving the profession altogether and patients are losing access to health care.

Again, my father's profession was surgery primarily, but he also practiced gynecology.

I was astonished to learn that in many medical schools today those young people studying to go into the various segments of medical practice are shunning gynecology. Some medical schools are not even graduating those engaged in gynecology. They have just stopped that segment of the profession because they know of the difficulties to practice gynecology as a result of medical malpractice suits.

I have here today the front pages of two of the leading magazines we all read. There it is. One: ''The Doctor Is

Out.'' The other: ''Lawsuit Hell—How Fear of Litigation Is Paralyzing Our Professions.''

There is the story.

All I am asking is if this bill passes the Senate that doctors, nurses, and other practitioners in health care are given the same equal treatment as the gun dealers and the gun manufacturers. It is as simple as that.

I have received numerous letters, as have every single Member of this body, from medical professionals in the Commonwealth of Virginia that share with me the very real difficulties they are encountering with malpractice insurance as a consequence of this problem.

I myself went through a modest medical procedure the other day. The radiologist literally cornered me as I was exiting the examination, and stopped to talk to me—not one, not two, but about eight came in knowing the Senator from Virginia was in the facility. They had me flat on my back. I listened very carefully as they explained—not complaining nor whining in any way, but in a factual way—how the radiologists in their profession have watched the astronomical increase in cost of their insurance.

Let me read a letter I just received. I will withhold the name. But the letter is in my office. This young doctor writes:

I am writing you to elicit your support and advice for the acute malpractice crisis going on in Virginia. . . . I am a 48-year-old single parent of a 14- and 17-year-old. After all the time and money spent training to practice OB-GYN, I find myself on the verge of almost certain unemployment and unemployability because of the malpractice crisis. I have been employed by a small OB-GYN Group for the last 7 years. Our malpractice premiums were increased by 60 percent in May 2003. The prediction from our malpractice carrier is that our rates will probably double at our renewal date in May 2004. The reality is that we will not be able to keep the practice open and cover the malpractice insurance along with other expenses of practice.

Colleagues, that is happening in just about every State in this great country of ours. We have here and now the chance to address this crisis in a fair and constructive way.

I mentioned the two magazines: The June 2003 edition of Time magazine had a cover story on the effects of rising malpractice insurance costs. The story, entitled ''The Doctor Is Out,'' discusses several doctors all across America who have had to either stop practicing medicine or have had to take other action due to increased insurance premiums. One example cited in this magazine is the case of Dr. Mary-Emma Beres. Time reports this doctor, a family practitioner from Sparta, NC—incidentally, the distinguished Presiding Officer represents this State with great distinction. That doctor in Sparta, NC ''has always loved delivering babies. But last year, Beres, 35 years old, concluded that she couldn't afford the tripling of her $17,000 malpractice premium and had to stop'' caring for those women going through perhaps the greatest joy of life; that is, childbirth.

The article continues:

''With just one obstetrician left in town for high-risk cases, some women who need C-sections now must take a 40-minute ambulance ride'' to other communities to try to get that service.

Dr. Beres' case makes clear that not only doctors are being affected by the medical practice insurance crisis, but patients are as well. With increased frequency, due to rising malpractice rates, more and more patients are not able to find the medical specialists they need.

The second magazine, Newsweek, also recently had a cover story on the medical liability crisis entitled ''Lawsuit Hell.''

I was particularly struck by the feature in this magazine about a doctor from Ohio who saw his malpractice premiums rise in 1 year from $12,000 to $57,000—1 year. As a result, this doctor ''decided to lower his bill by cutting out higher-risk procedures like vasectomies, setting broken bones and delivering babies—even though obstetrics was his favorite part of the practice. Now he glances wistfully at the cluster of baby photos still tacked to his wall in the office. 'I miss that part of the practice terribly,' he says.''

While these stories are compelling on their own, the consequences of this malpractice crisis can be more profound. On February 11, 2003, a young woman in Gulfport, MS, shared with both the HELP Committee in the Senate, on which I serve, and the Judiciary Committee her personal story about how this crisis affected her.

This woman told us how on July 5, 2002, her husband Tony was involved in a single car accident, in which he had a head injury, and was rushed to a hospital in Gulfport where he received medical attention. He could not be treated at the Gulfport hospital because they did not have the specialist necessary to care for him. After a 6-hour wait, he was airlifted to University Medical Center.

Today, Tony is permanently brain damaged. According to the person delivering this story, no specialist was on staff that night in Gulfport because overriding medical costs forced almost all the brain specialists in that community to abandon their practice. As a result, Tony had to wait 6 hours before the only specialist left in Gulfport could treat him to reduce the swelling of his brain.

Without a doubt, the astronomical increases in medical malpractice premiums are having wide-ranging effects. It is a national problem. It is time for a fair and national solution. This moment in the life of this great Senate is the chance to address that.

The President has indicated that the medical liability system in America is largely responsible for the rising costs of malpractice insurance. The American Medical Association and the American College of Surgeons agree with him as does almost every doctor in Virginia who I have discussed the issue with.

The president of the AMA, Dr. John Nelson, has publicly stated, ''We cannot afford the luxury of waiting until the liability crisis gets worse to take action. Too many patients will be hurt.''

The American College of Surgeons concurs by stating, ''More and more Americans aren't getting the care they need when they need it. . . . The 'disappearing doctor' phenomenon is getting progressively and rapidly worse. It is an increasingly serious threat to everyone's ability to get the care they need.''

Let me state unequivocally that I agree with our President, with the AMA, with the American College of Surgeons, and with the vast majority of doctors all across Virginia. That is why I am offering my amendment today.

My amendment is simple, like other measures that have come before the Senate, my amendment provides a nationwide cap on damages in medical malpractice lawsuits.

My amendment differs from other measures that have been voted on in the Senate in one key aspect—whereas these other bills would have applied to doctors, my amendment is solely limited to the caring medical professionals who take care of each and every one of us when we need medical care.

It is a commonsense solution to a serious problem.

Now that I have laid out the amendment, I would like to reiterate one important point. As you know, the gun immunity bill provides broad protection to gun manufacturers and gun dealers in both Federal and State court. The bill is aimed at protecting the manufacturers and dealers from lawsuits that result from the criminal or unlawful use of a firearm. The basic data is that if a manufacturer or dealer follows the statutory law in the manufacturing and sale of a legal product, they should not be held responsible for the actions of a third party.

While some may claim that this gun immunity bill might be an important component of tort reform, in my opinion, health care liability reform is even more important. We must protect the medical profession and the patients it serves.

How can we give near absolute protection from litigation for one industry—the gun industry—and do absolutely nothing for another industry that is solely dedicated to saving lives?

Let's ask ourselves, in the event that a bullet from a firearm is shot into an innocent victim, is our healthcare system prepared to help that victim? Without healthcare liability reform, it may not be, as there might not be the appropriate doctor in the area to tend to the patient. That is why my amendment goes hand-in-hand with the gun immunity bill.

So now it is up to my colleagues in the Congress. It is your choice. If we are going to give legal protections to the gun industry, all I say is let's give it to the doctors as well.

If you gave this choice to the American people, there is no doubt that the doctors would win by a 100 to 1 margin.

I urge my colleagues to support my amendment.

I yield the floor.

AMENDMENT NO. 2631

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, what is the pending amendment?

The PRESIDING OFFICER. The Senator's amendment is pending, the Levin amendment.

Mr. LEVIN. Madam President, in the fall of 2002 the entire country was focused on the Washington, DC, area as an unknown sniper indiscriminately shot 16 innocent people in little more than a month, from September 14 to October 24. Among the sniper victims were Jim Martin, shot and killed on October 2 while walking across a Shoppers Food Warehouse parking lot in Wheaton, MD, after purchasing groceries for his church; Sarah Ramos was shot and killed while sitting on a bench in front of a post office. She was waiting for a ride to take her to a babysitting job; Thirteen-year-old Iran Brown, the youngest of the victims, was shot in the chest and wounded on October 7 after getting out of a car at his middle school; and Conrad Johnson, a 35-year-old busdriver, was shot and killed on October 22 while standing on the top step of his bus at a ride-on bus staging area in Aspen Hill, MD.

On Thursday, October 24, members of the sniper task force arrested John Allen Muhammad and John Lee Boyd Malvo at a rest stop on I–75 in Frederick County. They were charged with shooting the victims with a Bushmaster semiautomatic assault rifle. Both were prohibited under Federal law from possessing a gun. Malvo is a juvenile and Muhammad was the subject of a domestic violence restraining order. Both have been convicted of capital murder in Virginia.

The sniper rifle used by Malvo and Muhammad was later traced to Bull's Eye Shooter Supply in Takoma, WA. Bull's Eye representatives claim not to have any record of sale of the weapon, cannot account for how the snipers obtained the assault rifle. Malvo later admitted he had shoplifted the gun.

The sniper case prompted an ATF investigation of Bull's Eye. The investigation revealed that the gun dealer had no record that the gun used by the snipers was missing from the inventory. The ATF investigation also determined that 77 other guns were missing from the Bull's Eye store. Four prior audits of the dealer found at least 160 additional guns missing from the store. The guns that were missing from Bull's Eye were not all handguns that could walk out the door in somebody's pocket. The gun shoplifted by Malvo was an assault rifle.

The families of the sniper victims filed a lawsuit against Bull's Eye and Bushmaster, the manufacturers that supplied the sniper weapon to the dealer, claiming that Bull's Eye operated its business in such a grossly negligent manner that scores of guns routinely disappeared from its store and that Bushmaster continued to supply that dealer even after years of audits by ATF showing that scores of guns were missing from the dealer's inventory.

Did Bull's Eye or Bushmaster violate any Federal or State statute? That is the issue. That is the heart of the issue we are debating. If you are reckless in your operations, even though you may not have acted illegally, but if you are reckless or if you are grossly negligent in your operations, should you be held accountable for your own actions? That is the question. Should you be held accountable for your own reckless or grossly negligent actions if that gross negligence or recklessness is the proximate cause of somebody else's death or injury?

That is what this amendment is all about. Frankly, that is what the bill is all about, to eliminate the possibility of recovery in cases where somebody can prove recklessness or negligence unless they can also prove illegality. That is the purpose of the bill, to give that immunity unless plaintiffs can prove illegality. The purpose of this amendment is to say that if you can prove gross negligence or recklessness on the part of an individual, and if that recklessness and gross negligence is the proximate cause of injury or death, then you are entitled to bring a lawsuit.

I listened to this debate; I have not been here for much of it, but I read a great deal and tried to follow it. It seems to me that is the heart of the matter and what it comes down to. That is what this amendment is intended to clarify.

Mr. WARNER. Could I ask my distinguished colleague a question, because Virginia was hard hit, as were Maryland and other States, by that sniper case, which the Senator recounted in the opening remarks.

It is my understanding—and I have followed the debate very carefully on all aspects of this legislation—but the legislation, if it were to pass, would put in doubt, to some considerable extent, the right of the many families. The greater community of the Nation's Capital was in semiparalysis. Schools closed. People could not conduct their normal activities because of the sense of lack of safety. They could not even do something simple such as filling the gas tank of the car.

It seems to me unless we let the full force and brunt of all the legal remedies available to citizens of our Nation be utilized to bring to justice, either civilly or criminally, all those who may have contributed—as the Senator says, by gross negligence—then we are denying, particularly to these sniper victims' families and others across the Nation, some very fundamental rights.

I commend my distinguished colleague from Michigan. It is my intent to support the Senator.

Am I correct in my premise, in my question?

Mr. LEVIN. The Senator from Virginia is very much on point and is correct. This is a victim's right remedies issue. Do we provide a remedy for a victim of somebody's gross negligence or recklessness that has injured that victim where the proximate cause of the injury—or a proximate cause of the injury, to be technically correct—is the defendant's recklessness or gross negligence or are we going to deny victims that remedy? Are we going to tell a victim: You have to prove that someone violated a law in order to get recovery, even though you can prove gross negligence or recklessness. Even though you can prove that recklessness or gross negligence on the part of someone you sue was a proximate cause of death or injury, you have to prove that there was a violation of law?

Why would we immunize any particular industry from that kind of recovery where it is not somebody else who is being sued for their contribution to somebody's injury but it is the industry itself or a gunstore itself or any store that contributed, through recklessness or gross negligence, to somebody's death or injury?

I have read and heard a lot in this debate about individual responsibility and accountability, that you should not be accountable for somebody else's actions injuring somebody else, and I do not disagree with that. My amendment says where it is your own recklessness or gross negligence which is a proximate cause of an injury or a death, you should not be immunized. That is what my amendment provides, that if your own recklessness or your own gross negligence is a proximate cause of death or injury, you should still be held accountable.

That is what we are going to be voting on. I hope we are going to be voting on it, I should say.

Mr. WARNER. Mr. President, for clarification, when my distinguished colleague from Michigan refers to ''victims,'' we should make it clear that oftentimes victims perish, so it is their spouses, their families we are talking about. I think in our discussion we ought to make it clear it is a class of people we are trying to protect.

Mr. LEVIN. The Senator is correct. In terms of the definition of ''victims,'' we are talking here about families who lose loved ones as well as people who are injured themselves.

I want to emphasize one fact here, which is there was a motion to dismiss this case in the State of Washington brought by victims against Bull's Eye and against Bushmaster. On June 27, 2003, the court denied the motions, and here is what the court said:

> [T]he facts in the present case indicate that a high degree of risk of harm to the plaintiffs was created by Bull's Eye Shooter Supply's alleged reckless or incompetent conduct in distributing firearms.

The court said it was the defendant's actions that caused damage to the

plaintiffs. It seems to me for us to say even though Bull's Eye caused damage through recklessness or gross negligence to victims, we are going to deny those victims a remedy unless they can prove there was an illegal action—not just a reckless action, but an illegal action—is to mistreat this particular class of victims.

To single out this class of victims and say, ''You cannot recover unless you can prove illegal action on the part of the defendant''—not just that they were reckless, not just that they were negligent—I think is highly arbitrary and discriminatory treatment of real victims who right now can go to court, and if they can show reckless behavior, negligent behavior on the part of the defendants that was a proximate cause of their injury, then they can recover.

I do not even know that Congress can constitutionally destroy the pending claim. I hope not. I hope we cannot destroy a claim that is pending for an injury that has already been caused, constitutionally, but I do know we should not try. We should not be trying to remove the rights of victims to sue people whose recklessness or gross negligence was a proximate cause of their injury.

That is what this amendment would assure, that that right of action for recklessness or gross negligence which is a proximate cause of the injury can be compensated for.

There are a number of other troubling cases that have been referred to that would be jeopardized. Again, I do not know that we can constitutionally eliminate a claim based on an action which has already taken place. I sure hope not. But I know what the intent of this bill is, which is to immunize the defendants whose reckless or negligent conduct is being sued upon.

The Guzman case, on Christmas Eve 1999—this was a man who was killed by a shot to his heart while standing in front of a Worcester, MA, nightclub. About a week later, the police recovered a handgun in a lot near where this man, Danny Guzman, was killed. The gun was lacking a serial number. It was found by a 4-year-old child. A ballistics test determined the gun was the one that killed Danny Guzman.

The investigation following the shooting revealed the gun was one of several stolen by employees of Kahr Arms. It was discovered that one of the employees in the Kahr manufacturing facility had stolen the gun used to kill Danny Guzman and sold it to buy crack cocaine.

Publicly available records, summarized in a complaint filed by Danny Guzman's family, indicate this employee of the Kahr facility had not only been arrested on various charges over the years but as early as 1995 had been addicted to cocaine and was ''habitually stealing money to support his cocaine habit.''

In March of 2000, the police arrested the Kahr employee who later pled guilty to the gun thefts. The investigation also led to the arrest of a second Kahr employee who also pled guilty to stealing a gun.

According to a complaint that was filed by Danny Guzman's family, Kahr Arms not only apparently hired a drug addict with a record of criminal charges, but the company also chose not to utilize basic security measures that could have prevented the theft, or an inventory tracking system that could have determined that guns were missing. According to the family's complaint, Kahr Arms did not conduct background checks on employees. The company did not install medal detectors, security cameras, x-ray machines, or other devices to ensure that employees did not just walk off with guns.

In fact, an affidavit signed by ATF Special Agent Michael Curran says the person who stole the gun that ended up killing Danny Guzman once said—we all should listen to those words—''he had taken the firearm out of the company, that he does it all the time, and that he can just walk out with them.'' Those are his words. He takes guns out of here ''all the time''—this drug addict. He can just walk out with them.

The company did not track its inventory in any meaningful way. And according to the complaint, from February 1998 to February 1999, approximately 16 shipments of handguns from Kahr Arms failed to arrive at their points of destination.

Did Kahr Arms violate a State or Federal statute? Nobody has claimed they did. And unless they did, under this pending bill, immunity from suit would result. It seems to me this is something all of us ought to be troubled by and focus on because there is a lot of uncertainty and confusion, I believe, as to what this bill would provide.

But at its heart, the issue is this: Should we say unless you can prove an act was illegal on the part of the defendant, you will not be able to recover for damages caused by that defendant's recklessness or gross negligence?

Should that defendant be immune from suit even though his recklessness or gross negligence has caused your injuries, unless you can prove that that conduct was also illegal?

The lawsuit that was filed by Danny Guzman's surviving family members alleges the wrongful death based on Kahr Arms alleged negligence. While the defendants moved to dismiss this case on April 7, 2003, the Massachusetts Superior Court denied the motions. This bill is aimed at nullifying that kind of case. I hope we can't constitutionally do it retroactively. I hope we cannot destroy that cause of action. But we should not try and we surely should not single out one industry to help immunize them against their own acts of recklessness or gross negligence.

In a third case, a team of Orange, NJ, police officers was operating undercover at a gas station that had been robbed repeatedly over the course of several months. Detective Lemongello was among the officers taking part in the undercover surveillance. In the course of a stakeout, Detective Lemongello attempted to question a man who had suspiciously approached the gas station. Lemongello walked up to the man and asked him to remove his hand from his pockets, whereupon the man turned and opened fire, shooting Detective Lemongello three times—once each in his stomach, chest, and left arm.

Detective Lemongello was able to announce over his police radio that he had been shot and that the suspect had fled the scene. In response to the radio call, Officer Kenneth McGuire set off on foot after the shooter, who had fled into a nearby neighborhood. When Officer McGuire entered a backyard where the suspect was hiding, the suspect emptied his ammunition clip, shooting Officer McGuire in the abdomen and leg. Officer McGuire managed to return fire, killing the suspect. It turned out that the man who shot Officer McGuire and Detective Lemongello was wanted for attempted murder and had at least three felony convictions on his record. This man could not have legally purchased a gun, so the question is, Where did he get it?

Mr. President, I have been asked by my good friend from Vermont to interject a statement on a different subject at this point. To accommodate him, I would be perfectly happy if the Senator from Idaho would be willing to have me yield to him for a statement, without losing my right to the floor.

Mr. CRAIG. If the Senator will yield, we had hoped to conclude the offering of amendments. I know there are many on your side who asked for morning business time today, some to make fairly extensive statements. I would not object to this happening. I hope you can get another Senator here for the offering of that amendment. Then we could step off the bill into morning business and open up other opportunities.

Mr. REID. Will the Senator from Michigan yield?

Mr. LEVIN. Yes.

Mr. REID. Mr. President, we have a situation we have to address. We know Senator LAUTENBERG is coming to the floor to offer an amendment, but that can't be done unless Senator LEVIN sets his amendment aside. If Senator LEVIN sets his amendment aside, he loses his rights to maybe have a vote. I certainly have no problem whatsoever with the Senator from Vermont speaking for 10 minutes since that is my understanding. Senator LEVIN would get the floor again. But I think for Senator LAUTENBERG, he should understand that he may not be able to offer his amendment today, as it is my understanding from my conversations with the Senator from Michigan, he is not going to allow his amendment to be set aside.

Mr. LEVIN. I would be happy to have my amendment set aside, providing

that after the Lautenberg amendment is offered, the floor then be returned to me.

Mr. REID. We could certainly do it that way.

Mr. LEAHY. If the Senator will yield for a question, I saw the distinguished Senator from New Jersey just enter the Chamber. I ask my friends, the senior Senators from Michigan, Nevada, Rhode Island, and Idaho, if perhaps the senior Senator from Vermont could proceed for about 10 minutes on the subject of land mines without the Senator from Michigan losing his right to reclaim the floor. In the meantime, maybe through the work that is always done with such finesse by the senior Senator from Nevada, something can be worked out.

Mr. REID. I ask unanimous consent that the Senator from Vermont be allowed to speak as in morning business for up to 10 minutes and, following that, the Senator from Michigan would reclaim his right to the floor. He would be recognized after that.

The PRESIDING OFFICER (Mr. SESSIONS). Is there objection?

Mr. CRAIG. Reserving the right to object, what the Senator from Michigan did a few moments ago—the Senator from Nevada may not have been present—was yield to the Senator from Virginia for the offering of an amendment. He did not lose his place. We returned to that. So if you are willing to extend that kind of courtesy to the Senator from New Jersey, we certainly have no objection.

Mr. REID. What we should do is have it go back to the Senator from Michigan, and then we will try to do something that will get us out of here today.

Mr. CRAIG. I have no objection.

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

The Senator from Vermont is recognized.

PRESIDENT BUSH'S POLICY ON LANDMINES

Mr. LEAHY. Mr. President, as an aside, for one who has been here for 29 years, sometimes the press talks about the rancor in the Senate. This was a matter of courtesy shown by the senior Senator from Idaho, the senior Senator from Rhode Island, and the senior Senator from Michigan to the Senator from Vermont. These are the kind of things that make the Senate work. I appreciate it.

Mr. President, back in the 1980s, about 15 years ago, I flew in a helicopter from Tegucigalpa, Honduras to the border of Honduras and Nicaragua. It was at the height of the Iran-contra war. On the way I met with the contras there at their camp. And on the way back, there was a clearing in the jungle. You could see a Quonset hut with a red cross on the top. We landed there. It was a field hospital. There was a dirt floor inside, with beds, and an operating room next to it.

Inside I met a little boy, probably about 12 years old, with one leg; he had a homemade crutch. He had no place to live, and the doctors let him stay there on sort of a makeshift bed of blankets and rags in the corner.

He was a nice boy. He had no idea who I was or what I was doing there. He was just excited to see a helicopter come in. I talked with him through a translator. He had lost his leg from a landmine along one of the trails near where his family lived. They were farmers.

I asked him if the landmine was placed there by a Sandinista or a contra. He didn't have the foggiest idea. He wasn't even sure what this country, just a few miles away across the border, Nicaragua, was.

What he did know was his life was changed forever, and that he would not be able to run again, or work in the fields, or be a farmer like his father. It was a tragic story.

I came back and started work on a fund for mine victims, which through the courtesy of the Republican side is now known as the Leahy War Victims Fund, and it has had strong bipartisan support. But while that fund has helped many mine victims get artificial limbs and walk again, I soon realized that no matter how much money we spend we would never stem the loss of life from landmines that way.

Since I met that boy over a decade and a half ago, I have spoken on this floor about the dangers of landmines to innocent civilians and American soldiers so many times I have lost count. Perhaps I sound like a broken record, but I feel so passionately about this.

Years ago, I sponsored the first law anywhere in the world to stop the export of antipersonnel landmines. My distinguished friend from West Virginia and my distinguished friend from Michigan voted for it. The United States had the first law in the world stopping the export of antipersonnel landmines. That led to similar actions by other nations. In a short time, our allies took far bolder steps. Just 5 years later, a treaty banning antipersonnel mines was signed in Ottawa. I was there when it was signed. Today, over 150 nations have joined that treaty, including every NATO ally and every country in the Western Hemisphere, except two, the United States and Cuba.

It is interesting to recall the speech of former Foreign Minister Lloyd Axworthy, who laid down the challenge in Ottawa. Yet today, almost a decade later, in this hemisphere only two countries, the United States and Cuba remain the outcasts.

During the Clinton administration, I worked closely with the White House on this issue. I was disappointed that President Clinton did not join the Ottawa Treaty, even though he could have, but he pledged to work aggressively to find alternatives to landmines so the United States could join by 2006.

Until this morning, that pledge was United States policy and the Pentagon publicly embraced it.

I ask unanimous consent that a May 15, 1998, letter to me from the former National Security Advisor, Sandy Berger, which spells out that policy be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. The Pentagon said publicly that they would uphold the pledge of the President of the United States, but behind the scenes they worked assiduously to undermine the Clinton policy. Today, we see the result in an announcement that the White House and Pentagon carefully leaked to the press last night in an attempt to put a positive spin on what anyone who knows the issue can see is a step backward.

We see that the Bush administration has abandoned any pretext of joining other civilized nations to eliminate these outmoded, indiscriminate weapons.

Before I explain why the administration's policy is so deeply disappointing to those of us who have worked on this issue for years, I want to be clear of my respect for Secretary of State Powell, for Assistant Secretary Lincoln Bloomfield, and others in the State Department who administer our humanitarian demining programs. These programs save lives and limbs, and this administration's plan to increase funding for these programs by $20 million is constructive. It is far too little, especially for the wealthiest Nation on earth, but it is a positive step.

I also want to emphasize that, except for in Korea, the United States no longer uses the type of landmines which pose the gravest risk to innocent people, the way some nations and rebel forces do. Instead, we are helping countries clear their minefields. Just this week, the Vietnam Veterans of America Foundation, led so courageously by Bobby Muller, signed an agreement with the Vietnamese Ministry of Defense to conduct a countrywide survey of unexploded mines and other bombs, many of which were left by our soldiers, as well as by Vietnamese soldiers, and which continue to maim and kill innocent people. Once that survey is completed, we and other nations can help remove these explosives and end the deadly legacy of that war.

So the issue for the United States is not whether the U.S. is using mines that are causing civilian casualties. In fact, we have not used landmines since 1991 in the first Gulf war, and there is no evidence those mines had any effect whatsoever. In fact there is no evidence the Iraqis even knew they were there. The real issue, which the Pentagon and White House are either incapable of grasping or, more likely, want to ignore, is that as long as the United States, with by far the most powerful Armed Forces ever known in history, continues to insist on its right to use these indiscriminate weapons, other nations with armies far weaker than ours are going to insist on their right to use them also.

The victims are going to be innocent civilians and U.S. soldiers who, even today, are losing their lives and limbs from mines in Iraq.

Mr. President, over 2 years ago, the Bush administration announced it would review U.S. landmine policy. I welcomed that review. I told President Bush, the Secretary of State, and officials in the Pentagon that I wanted to find an approach with broad, bipartisan support, including from the Pentagon. Also, as much as I wanted us to be one of the overwhelming majority of nations that have joined the treaty, I knew the Bush administration was not likely to do that. I felt that working together we could move toward that goal by strengthening our own policy.

Today, over 2 years later, and after refusing to consult with me or other Members of Congress on either side, the White House announced its plans. We now see that we would have been far better off if the administration had not conducted its review in the first place. Except for a few positive aspects, the policy is a disappointing step backward.

What we see is another squandered opportunity for U.S. leadership on a crucial arms control and humanitarian issue. We see the United States saying we will continue to use landmines indefinitely.

Once again, we had the opportunity to join the civilized world in solving a global crisis, as all our NATO allies have. And once again, we have chosen unilateral arrogance over leadership and cooperation.

The administration's press office has done an impressive job portraying this policy as an important advance, but it is not.

They say they will eliminate persistent landmines by 2010. That is constructive. But in fact, except for Korea, the United States has not used these types of mines for decades.

Six years ago, the Clinton administration, including the Pentagon, pledged to ''search aggressively'' for alternatives to self-destructing anti-vehicle mine systems by 2006. The Bush administration abandons this pledge and will allow the use of these mines anywhere, indefinitely.

In 1998, the Clinton administration pledged that it would sign the Ottawa treaty banning anti-personnel mines by 2006, if suitable alternatives to these mines were fielded by then. The Bush administration abandons this pledge.

The Bush administration says it will seek a worldwide ban on the sale or export of persistent mines, but that we will keep our self-destruct mines indefinitely. Let's be honest. We tried that back in 1994, and the reason it failed was, not surprisingly, that other countries said ''if you, the world's strongest military power are unwilling to give up your landmines, why should we give up ours?''

Mr. President, I had hoped that the President would seize this opportunity to show real leadership. We can solve this problem if we set the example. It could be done so easily. Instead, the President has taken us backwards.

I will speak more about this in future weeks. I do appreciate the consideration of my colleagues in giving me this time.

I yield the floor.

EXHIBIT 1

THE WHITE HOUSE,
Washington, May 15, 1998.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: The President has asked me to confirm our understanding regarding the one-year statutory moratorium on the use of anti-personnel landmines (APLs) that is due to take effect next February. We very much appreciate your working so closely with us to define an approach that meets not only our solemn obligation to provide for the protection and safety of our Armed Forces in battle, but also our mutual goal of advancing our efforts to rid the world of APLs.

We are very gratified that you will not oppose adding flexibility to the 1996 moratorium legislation in the form of a Presidential waiver authority that would be attached to the pending FY 1999 defense authorization bill when it is considered by the Senate next week.

In this context, let me reiterate the following commitments on the part of the Administration:

The United States will destroy by 1999 all of its non-self-destructing APLs, except those needed for Korea.

The United States will end the use of all APLs outside Korea by 2003, including those that self-destruct.

The United States will aggressively pursue the objective of having APL alternatives ready for Korea by 2006, including those that self-destruct.

The United States will search aggressively for alternatives to our mixed anti-tank systems by (a) actively exploring the use of APL alternatives in place of the self-destructing anti-personnel submunitions currently used in our mixed systems and (b) exploring the development of other technologies and/or operational concepts that result in alternatives that would enable us to eliminate our mixed systems entirely.

Finally, the United States will sign the Ottawa Convention by 2006 if we succeed in identifying and fielding suitable alternatives to our anti-personnel landmines and mixed anti-tank systems by then.

Again, I thank you for your leadership on this issue.

Sincerely,

SAMUEL R. BERGER,
Assistant to the President for National Security Affairs.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I know under the order, Senator LEVIN is to have the floor. I ask unanimous consent that I be allowed to propound a unanimous consent request and that he have the floor following that.

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

Mr. REID. Mr. President, the Senator from Michigan says he will complete his statement in 10 minutes. The Senator from New Jersey has two amendments he wishes to offer, 10 minutes on each amendment, for a total of 20 minutes. I will propound a unanimous consent request in just a second, but I want everyone to know what is going on. That will take a half hour. Following that, I ask that there be a time to go to morning business. There will be no more amendments offered today, and we would go to morning business and Senator LEVIN's amendment would be the amendment that would recur following the two amendments of the Senator from New Jersey.

I will propound that in the form of a unanimous consent request unless someone at this stage believes there is anything inappropriate with it. I know Senator BYRD has been waiting. He asked yesterday to come and speak, but we didn't know it would take as long. I tell the Senator from West Virginia, it will be approximately a half hour before we get to morning business.

Mr. BYRD. Mr. President, will the distinguished Democratic whip yield?

Mr. REID. Yes.

Mr. BYRD. About what time would it be possible for me to get the floor?

Mr. REID. Mr. President, I tell the distinguished senior Senator from West Virginia, it would be a little bit after 1 o'clock, thereabouts. Then we have Senator CONRAD who wishes to speak for 45 minutes and Senator HARKIN who wishes to speak for a half hour. I am not going to set the order, but I ask that Senator BYRD be recognized initially in morning business.

Mr. BYRD. I thank the Chair.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. REID. I will be happy to yield.

Mr. CRAIG. Mr. President, I do not believe I have any disagreement with that concept or the UC the Senator will propound, just as long as we have adequately served all Senators who want to offer amendments to S. 1805. It appears the numbers are here for that purpose.

Mr. REID. I say to my friend from Rhode Island, Senator REED, who is in the Chamber, we are still in the process of trying to work out definite times on Monday so that he, Senator FEINSTEIN, and those who are speaking in opposition—which will take a total of 3 to 4 hours—will have time on Monday.

Mr. President, I ask unanimous consent that Senator LEVIN be recognized for up to 10 minutes to complete debate on his amendment; following that, that his amendment be set aside temporarily and that Senator LAUTENBERG be recognized to offer two amendments and that Senator LAUTENBERG be able to speak for a total of 20 minutes on his two amendments; following that, the amendment of the Senator from Michigan would recur; and that following that, we go to a period for the transaction of morning business, and that Senator BYRD be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Chair and thank the Senator from Nevada.

I want to go back to the case of the two police officers who were shot with a gun that was sold under extremely suspicious circumstances by a gun dealer who was then sued by these two police officers.

The lawsuit alleged on the part of the defendants some very serious negligence, gross negligence, recklessness in terms of that sale. The person who purchased the gun bought 11 other guns at the same time, selected by somebody else. The person who filled out the purchase paperwork was not the person who actually bought the guns. They were picked out by a second person.

Like the New Jersey man who shot these two officers, the man who selected the guns was a convicted felon. The guns were paid for entirely in cash, several thousand dollars. The gun purchase was about the second in 3 weeks from the same two buyers from that dealer.

These were significant allegations that were brought by two police officers who were severely injured by that gun, claiming that the action on the part of the gun dealer was negligent and reckless behavior. There is a lot of evidence suggesting that it was.

A West Virginia judge refused to dismiss this case that these two police officers brought saying there was sufficient evidence to go to a jury; that is, evidence of recklessness or negligence on the part of the defendants. It was their recklessness, their negligence which was the proximate cause, allegedly, of the damage.

We have heard a lot about whether people should be held accountable for somebody else's illegal action. That is not what this amendment is about. That is not what this bill is about. What this bill is about is to immunize a certain industry from their own reckless and negligent behavior, not somebody else's, but from their own reckless and negligent behavior, unless the people who are injured can also show that they acted illegally.

This is special treatment for one particular industry.

We owe a great debt to these police officers who put their lives on the line, and it seems to me it is an insult for the response to their bravery to be: You cannot bring an action against a gun dealer who acted negligently or recklessly and whose negligence or recklessness was a proximate cause of your injury. Sorry, you have to prove that gun dealer acted illegally; that he acted reckless is not enough; that you were injured as a proximate result of that recklessness is not enough. We are going to immunize that particular gun dealer and anyone like him from their own reckless, negligent behavior unless you can carry an additional burden that they also acted illegally.

That is the response to officers who are gunned down and where their injuries were a proximate result of the recklessness and negligence of that gunshop.

Those are the allegations. Should they be allowed to prove them? The intention of the legislation in front of us is that they not be allowed to prove them unless they can also allege there was illegal action on the part of that gunshop. I think we can see why so many associations of police officers are very much opposed to this legislation and its purpose.

A number of law enforcement officers wrote Senators a letter opposing what this bill intends. In it they said police officers like Ken McGuire and David Lemongello put their lives on the line every day to protect the public. Instead of honoring them for their service, this bill would deprive them of their basic rights as American citizens to prove their case in a court of law.

Manufacturers and dealers of guns have a right to make and sell guns, but that right also is not unlimited because it comes with some responsibility. Like every other business in this country, people who are in the gun business have a responsibility to conduct that business with reasonable care. If a gun manufacturer or gun dealer fails to do so, and their negligence or recklessness leads to someone being killed or injured, they should not be immune from suit.

According to a recent report, 57 percent of crime guns in the United States could be traced back to 1 percent of the gun dealers in this country. We should not let that 1 percent off the hook. We should not single out one industry for these special protections.

Earlier this Congress, the Senate Judiciary Committee, considered an amendment to exempt class action lawsuits filed against the gun industry from the diversity and removal provisions of the class action bill. The committee rejected that amendment and in its report on the bill the majority put it this way:

> Simply put, there should not be one set of rules for one category of defendants and another for another group of defendants.

Well, if that holds true in the case of a class action bill, it should be true also relative to this legislation. This bill not only singles out one industry for special favored treatment, but in the process it undermines long-standing principles of tort law.

Traditionally, tort law has been left to the States to define, and if changes have been necessary Congress has usually deferred to State legislatures to make those changes. This bill seeks to impose a Federal tort regime that would virtually eliminate the ability of State courts to hear and decide cases involving even grossly negligent or reckless conduct by gun dealers and manufacturers, even where existing State law would permit such cases.

A Georgetown University Center law professor by the name of Heidi Feldman put it this way about this bill:

> . . . one of the most radical statutory revisions of the common law of torts that any legislature—Federal or State—has ever considered, let alone passed.

I have looked at a lot of Federal laws that affect the civil liability of various industries, and I, too, have seen nothing that comes close to what this bill would do.

Whatever we are going to do, it seems to me we ought to do it knowingly. We ought to understand what it is that we are being asked to do. What the bill says is, unless someone who is injured by somebody else's reckless or negligent conduct, unless that plaintiff can also show that the conduct was illegal, they will not be able to recover damages for their injuries. That is a radical departure from fairness, not just from the common law. That is a radical departure from protecting victims and trying to preserve their rights.

We should not take that step without at least understanding what we are doing. The purpose of my amendment is to make sure that we at least have an opportunity to vote on a central proposition: Whether or not when somebody is injured as a proximate result of somebody else's gross negligence or recklessness that that person who is injured should have an opportunity to recover damages, even if they are unable to show that the defendant's reckless or negligent conduct was also illegal.

That is the central issue this bill addresses. It is the central issue my amendment addresses. I think it is important that this Senate not only understand what the central issue is but have an opportunity to vote on that specific issue, and that is what my amendment is all about.

My amendment will give us the opportunity to vote on whether we intend to give immunity to persons who cause injuries to others through their own—and I emphasize ''their own''—reckless and grossly negligent behavior, where that behavior is a proximate cause of somebody else's injuries.

I hope the Senate will adopt my amendment. I hope we will modify the bill in front of us so that we can protect victims, and that is really what the amendment and the bill is all about.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 2632

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. Under the previous order, the pending amendment is set aside and the clerk will report the Lautenberg amendment.

The assistant legislative clerk read as follows:

> The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 2632.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require that certain notifications occur whenever a query to the National Instant Criminal Background Check System reveals that a person listed in the Violent Gang and Terrorist Organization File is attempting to purchase a firearm, and for other purposes)

At the appropriate place, insert the following:

SEC. —. AMENDMENTS TO BRADY HANDGUN VIOLENCE PREVENTION ACT.

(a) SHORT TITLE.—This section may be cited as the ''Terrorist Apprehension Act''.

(b) AMENDMENTS.—Section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) is amended—

(1) in subsection (i), by striking ''No department'' and inserting ''Except as provided in subsection (j), no department'';

(2) by redesignating subsections (j) and (k) as subsections (k) and (*l*), respectively; and

(3) by inserting after subsection (i) the following:

''(j) TERRORIST APPREHENSION.—

''(1) INITIAL NOTIFICATION.—If the system established under this section determines that a prospective transferee is listed in the Violent Gang and Terrorist Organization file or a similar terrorist watch list, regardless of the eligibility of such person to purchase a firearm, the system shall provide this information to the employee at the Criminal Justice Information Services Division of the Federal Bureau of Investigation that is accessing the national instant criminal background check system (referred to in this subsection as the 'NICS operator').

''(2) NOTIFICATION OF LAW ENFORCEMENT.—Upon receiving information under paragraph (1), the NICS operator shall immediately provide the Federal Bureau of Investigation, the Department of Homeland Security, the terrorist task force, and State and local law enforcement in the jurisdiction in which the firearm purchase is being attempted with—

''(A) the name, date of birth, and any other identifying information reported by the prospective transferee;

''(B) the time and place of the attempted firearm purchase; and

''(C) the type of weapon, if known, that the prospective transferee attempted to purchase.

''(3) NOTIFICATION OF ORIGINATING AGENCY.—In addition to the notifications under paragraph (2), the NICS operator shall immediately provide the agency that placed the name of the suspected terrorist on the terrorist watch list with the information described in subparagraphs (A) through (C) of paragraph (2).''.

Mr. LAUTENBERG. Mr. President, this amendment would override what I see as a misguided Department of Justice policy that adds to the threats to our homeland security and leaves our country more vulnerable to terrorist attacks. This amendment is identical to bipartisan legislation I previously introduced. It was called the Terrorist Apprehension Act, and it was cosponsored by Senator DEWINE with me.

This amendment will direct the administration to do all it can to apprehend potential terrorists within our borders.

We found out if someone on the terrorist watch list, someone who is a potential threat to communities across the country, purchases a weapon, and that information is logged into the gun background check system, the Department of Justice has an order that prevents that background check information not to be put on an alert. They do not even share the critical information with law enforcement concerning the whereabouts of the terrorists.

It sounds kind of backwards to me. I find it very disturbing that we could have a nationwide lookout for known terrorists within our borders, and if he obtained a weapon the Justice Department's policy is to conceal that information from the FBI or other interested law enforcement personnel.

I know there are differences on gun policy that we may have within the Government, but I cannot believe there is anyone in this body who would not want to see us do whatever we can to alert the FBI or the appropriate parties to the fact that there is a terrorist lurking around trying to purchase a gun or who has purchased a gun.

I know many pro-gun groups have said terrorists are not likely to or would not buy a firearm on the legal market anyway, but the evidence we have discovered points otherwise.

An investigation by my staff revealed that a small sample of gun purchases reviewed by the Department of Justice showed that over a few months 13 people on the terrorist watch list successfully purchased a firearm at gunshops. The access that terrorists in our country have to guns is chilling, such as the .50 caliber assault weapon which could take down a helicopter, according to the Congressional Research Service. We learned also that that weapon can penetrate 6 inches of steel plating and has the range of a mile; that a target can be hit from a mile away, and it can also carry an incendiary bullet that would immediately cause the surroundings to burst into flames.

I know the Justice Department's position is at odds with the Department of Homeland Security, but again I cannot believe that either one of those Departments are not anxious to get as much information as they can about terrorist activity relating to guns.

During his confirmation earlier this year, Tom Ridge acknowledged to me the dangers of terrorist access to guns, and under oath at another hearing the General Counsel of the Department of Homeland Security told me it was his belief that someone on the terrorist watch list should not be at all permitted to purchase guns.

Unlike the Department of Homeland Security, the Department of Justice apparently sees things very differently. DOJ is not willing to give critical information to law enforcement sectors when someone on the terrorist watch list purchases a firearm. In fact, the Department of Justice requires the FBI to prove—believe this—that the terrorist should not be able to legally buy a gun and DOJ gives the FBI 3 days to come up with a reason. But if no reason is given in 3 days, then the gun is handed over to the terrorist.

It is quite an anomaly, that the Department of Justice requires the FBI to prove a terrorist should not be able to legally buy a gun. That doesn't make sense to me.

To make matters worse, the policy of the Department of Justice is not to tell law enforcement the details of the transaction, including where it took place and when it took place. So we could have a nationwide lookout for a terrorist and the Department of Justice, knowing that the terrorist just obtained a gun, will not tell the appropriate law enforcement people where the terrorist is.

This is a misguided policy of the Department of Justice. It has to change. My amendment would make that change. My amendment is simple and to the point. It says if a terrorist buys a gun, law enforcement must be notified promptly that this transaction has taken place. The FBI, local police, and the regional terrorist task force must be told the time and place of the purchase, without excuses. Every minute we allow the current Department of Justice policy to stand, we put our constituents at unnecessary risk.

I ask my colleagues to support this commonsense, bipartisan amendment. It is my hope that amendment will carry. We are all interested in reducing the threat of terrorism as much as we possibly can.

Mr. President, of course, we have to lay the first amendment aside before we can proceed to the second.

The PRESIDING OFFICER. Under the previous order, the first Lautenberg amendment is set aside.

Mr. LAUTENBERG. Mr. President, I neglected to use the graph I have to demonstrate what happens. The subject of a terrorist watch list purchases weapons, the NICS gun background check system is in place, it is entered in the NCIC crime database, and here there is a silent alarm. It doesn't really tell anything to the FBI terrorist task force. That is almost totally incomprehensible.

AMENDMENT NO. 2633

Mr. President, pursuant to the request I made that the other amendment be laid aside, I now send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 2633.

Mr. LAUTENBERG. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To exempt lawsuits involving injuries to children from the definition of qualified civil liability action)

On page 9, between lines 2 and 3 insert the following:

''(vi) any action involving injury to children.''.

Mr. LAUTENBERG. Mr. President, this amendment is designed to protect

the rights of our most vulnerable and most precious resource, our children. If this bill is enacted without this amendment to the pending bill, we will be passing legislation that protects the interests of the National Rifle Association and negligent gun dealers and manufacturers, errant manufacturers, at the expense of our kids.

It is really coldhearted, as we see if we examine this legislation. How distant do we want to make ourselves from a condition that is so tragic that even just hearing about it, if it is in your own household, sends chills up and down the spine? We have already rejected in this debate the rights of sniper victims and police officers. But are we now willing to go ahead and victimize our children? Children who are injured by a gun, the families of children killed by guns, do we want to shut down their rights? I am a proud grandfather of 10 wonderful grandchildren. It pains me to think that the Senate in which I serve is willing to expose them to greater danger. That process is pretty easy, if there is no punishment severe enough to curb either negligent or reckless behavior on the part of manufacturers, dealers, or distributors.

I think the biggest rogue of all that we all talk about is the shop that permitted Lee Malvo to get the gun he had, the Bull's Eye shop. They had guns all over the place on display and couldn't detect that 237 or so guns were unaccounted for. That suggests even greater danger. What I really hope we can do is not take away a tool that helped make this society safer for our kids.

How can we leave out the children, the children's families, when it comes to seeking redress if this kind of tragedy strikes that family? Every day we hear more about another child falling victim to gun violence. It is a national epidemic. In 2002 alone, the Centers for Disease Control and Prevention estimates there were 13,000 kids injured by a firearm. From 1996 to 2001, more than 1,500 children were killed in firearm accidents. The CDC also found the overall firearm-related death rate among United States children below the age of 15 was nearly 12 times higher than it is in 25 other industrialized countries combined. This horrible trend in our Nation must be stopped. We should be working to enhance the safety of our children and not reduce it.

Tennille Jefferson, the mother of a child victim, understands only too well what dangers can result from negligent gun dealers. On April 19, 1999, her son Nathan was shot and killed by a young boy who found the gun on the street, a gun belonging to a gun trafficker named Perry Bruce, who bought the gun from a disreputable gun dealer. The gun dealer sold Perry Bruce guns, despite many obvious signs that he was trafficking in guns. Bruce had shown a welfare card as his only form of identification. Yet somehow he was never questioned about how he managed to scrape up the thousands of dollars necessary to purchase 10 guns.

The gun trafficker, Mr. Bruce, admitted the gun dealer ''had to know what I was doing,'' and that he was high on marijuana each time he bought guns from this company. But the dealer acted recklessly. He had the information. Yet he sold the guns to Bruce. The result was the death of Nathan Jefferson. If this bill passes, families like the Jeffersons will not be able to hold the negligent, careless, irresponsible dealers and manufacturers who sell them to be liable for the murder of innocent children. This bill chooses special interests over the innocents. It is a sad commentary on this Senate. To be blunt, this immunity bill is a form of child abuse. We still have a chance to reverse the course and I hope we are going to do it. Meanwhile, I urge my colleagues to support this amendment and preserve the rights of America's children.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from West Virginia.

A BUDGET OF GIMMICKS, FALSE PROMISES, AND UNREALISTIC EXPECTATIONS

Mr. BYRD. Mr. President, with the release of the President's budget for the fiscal year 2005, and the upcoming markup of the fiscal year 2005 budget resolution, it is now clear the promises made by this administration during the 2000 election have not been kept. Contrary to the promise made 4 years ago to ensure the Social Security benefits promised to our Nation's workers, our retirement and disability system has become more vulnerable.

Contrary to the promise made 4 years ago to make health care more affordable, drug prices continue to rise and health insurance remains unobtainable for too many Americans.

Contrary to the promise made 4 years ago to protect our Nation's vital industry, this administration's tax and trade policies have been an unmitigated disaster with an alarming number of jobs being lost overseas.

Contrary to those assurances that it could be trusted to act as a prudent and responsible manager of our Nation's fiscal policies, the Bush administration has demonstrated neither prudence nor fiscal responsibility.

In his February 2001 address to a joint session of Congress, the President promised to pay down $2 trillion in debt during the next 10 years. He said that is ''more debt repaid more quickly than has ever been repaid by any nation at any time in history.''

The President has not kept that promise.

Since President Bush submitted his fiscal year 2002 budget, our gross national debt has increased from $5.6 trillion to $7 trillion, and deficits have risen to $521 billion in fiscal year 2004.

With the deficit projections mounting, the cries of alarm are growing steadily louder. The IMF—an international organization normally concerned with the debt problems of third world nations—has issued an alarming critique of the United States, pleading with the Bush administration to rein in its massive budget and trade deficits. Similar warnings have emanated from Federal Reserve Chairman Alan Greenspan, former Treasury Secretary Robert Rubin, and the U.S. Comptroller General, David Walker.

Even the administration's own political allies, ranging from the conservative Heritage Foundation to private sector economists who endorsed the President's tax cuts, have pleaded with this administration to get its fiscal act together. Yet these warnings fall on deaf ears in this administration.

After spending $1.7 billion to finance three enormous tax cuts in the last 3 years, the President's budget proposes an additional $1.24 trillion—in other words, that is one and a quarter trillion dollars—for more tax cuts.

President Bush's assertion that his budget will cut the deficit in half by 2009 is one more in a litany of promises that will go unfulfilled.

The Bush administration's own budget documents show that if none of its proposals were enacted into law, the deficit would still be cut in half.

The President's budget actually makes the deficit worse in 2009 than if the Congress took no action at all.

For the fiscal years 2001 through 2010, this administration's policies have transformed a 10-year, $5.6 trillion surplus into a $4 trillion deficit—and it just keeps getting worse.

The President's budget includes record deficit projections that will push our national debt to extreme limits never before seen in our Nation's history, or any other nation's history for that matter.

President Bush's budget is a wake-up call for working Americans. Under the guise of inviting middle class workers to sit at the table and share in the tax cut, this administration ran up a tab that won't be paid for by those with golden parachutes. It will be the working man—the man who works with his hands, in many instances, or most. It will be the working man who gets stuck with the bill—the working man, the forgotten man in this administration. In this administration's tenure, the working man is the forgotten man.

Instead of ensuring the Social Security benefits promised to workers—here me out there—the President's budget would spend the entire Social Security surplus over the next 5 years—all $1.1 trillion of it—to pay for the administration's tax cuts for the affluent and for the corporate elite. Not one thin dime would be allocated to save your Social Security.

I remember life in the coalfields life in southern West Virginia when there was no Social Security. We had the old Raleigh County poor farm. Raleigh County is in south-central West Virginia, a great coal-producing county over the years. I remember the old