

place in the Chinese Communist government in its attitudes and its policies toward its own people.

Madam President, I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I ask unanimous consent that I be permitted to proceed as if in morning business.

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

(The remarks of Mr. BUMPERS pertaining to the introduction of S. 2030 are located in today's record under "Statements on Introduced Bills and Joint Resolutions.")

TELEPHONE PRIVACY ACT

Mr. BUMPERS. Madam President, I recently introduced S. 1968, the Telephone Privacy Act. This bill, which has bipartisan support, has nothing to do with Linda Tripp or anybody else.

I first proposed legislation regarding telephone privacy in 1984 when it was revealed that Charles Wick, who was head of the United States Information Agency, had tape-recorded President Reagan and President Carter and several Cabinet officials 84 times without their knowledge.

Can you remember when you were a kid and you used to listen to telephone conversations? The announcer would call somebody or somebody would call in because they had the answer to a question, and you would hear beeping in the background. In those days, that was a sign that you were being recorded. Somewhere along the line, that practice was discontinued. Today, you can tape-record your very best friend and not tell that friend and hand it to all three networks for use on the evening news and no federal crime has been committed.

Not too long ago, Attorney General Reno testified before the Appropriations Subcommittee on State, Justice, Commerce, on which I sit. At that time, we were working on this bill, and I asked her about it. She said, "Well, Florida already has such a law that makes it a criminal offense to tape-record a conversation without telling somebody."

I said, "How long have they had the law?"

She said, "Since around 1970."

I said, "Were you the prosecutor in Dade County at the time that happened?"

She said she was.

I said, "Well, how did you feel about the bill when it was being debated?"

She said, "I favored it."

As usual, Congress doesn't get the message until after the States have acted—16 States have already enacted legislation almost identical to S. 1968, and here we sit still allowing people to invade our privacy, the most fundamental privacy when people have their guard down the most, by tape-recording conversations which can later be used for any purpose they choose. It is not an offense, and it ought to be.

I hope that some of my colleagues who may be listening will go back and look at my full remarks that were entered in the RECORD at the time I introduced that bill.

EXCULPATORY EVIDENCE AND GRAND JURIES

Mr. BUMPERS. Madam President, on a separate matter, I want to inform my colleagues that I am also working on legislation that will require prosecutors, before they ask for an indictment, to also give the grand jury any exculpatory evidence they may possess.

Prosecutors, as I previously outlined in some detail, have such an advantage, such an upper hand. Some of it is legitimate, and some of it is not. As one New York judge said, "A grand jury will indict a ham sandwich" if the prosecutor asked them to.

I had a prosecutor tell me one time, "This is the best grand jury I ever saw; it indicted everybody I asked them to indict." Of course they indicted everybody. They are putty in his hands.

I will just give you an illustration of the kind of case that I am trying to get at.

Let's assume that you are a prosecutor and you are getting ready to ask the grand jury to indict somebody for capital murder. Assume further that all the testimony that has been taken in that case said that the man who pulled the trigger and committed the murder was wearing a green jacket.

Assume further that the prosecutor has had information come to him personally, though it has never been presented to the grand jury, that it was, in fact, a red jacket.

I am making a rather extreme case here, but I ask you, in the spirit of elemental fairness, do you believe that the prosecutor, before he asks somebody to go on trial and possibly end up in the electric chair, is beholden in any way to tell the grand jury of totally exculpatory evidence that he may have in his possession?

There is a Supreme Court decision, the name of which I forget, in which the Supreme Court ruled 5-4 that the prosecutor is absolutely under no compulsion to tell the grand jury of any exculpatory evidence in his possession. If that isn't a betrayal of everything that we Americans believe, including fundamental fairness, if that is not a betrayal of everything I was taught in law school, I cannot think of a more egregious case.

Madam President, one of the reasons we have not had these debates in the past is because the crime rate in this country was soaring. And everybody was in a put-them-in-jail and throw-away-the-key mode. But I wanted my colleagues to stop and just reflect for a moment. God knows, I am not suggesting any guilty person should go free, but you heard that old story: Better that 1,000 guilty people go free than one innocent person be convicted.

I did not do very much criminal trial work when I practiced law. I used to

take maybe one case a year just so I would have to stay boned up on what the Supreme Court had ruled on, mostly rules of evidence and defendants' rights. And, yes, I defended a man one time that in my own mind I felt sure was guilty and the jury acquitted him. That sounds terrible to a lot of people who do not understand the criminal justice system. Everybody is entitled to a trial.

So all I am saying is the crime rates are coming down. People ought to be in a little more circumspect mood about what the Founding Fathers meant. The most important thing I said in my former remarks a moment ago about the bill I am introducing today is that the law is supposed to be a shield as well as a sword. It is supposed to protect the liberty of people in this country as well as to prosecute the guilty. It also has an obligation to defend and free the innocent. So that is all these proposals I am making are calculated to do; keep a firm commitment to our elemental belief in fairness, in the rights of the innocent and, yes, to prosecute and convict the guilty.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I ask unanimous consent to speak for 10 minutes as in morning business.

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

COMPREHENSIVE TOBACCO LEGISLATION

Mr. DORGAN. Madam President, before I begin talking about an amendment I intend to offer on the piece of legislation we will consider this week dealing with the IRS, let me say that the Congress Daily this afternoon indicates the Senate majority leader says "the compromise tobacco bill developed by Commerce Chairman MCCAIN may not be the base bill considered by the Senate when it takes up the tobacco issue. . ."

I am quoting:

When asked whether he plans to bring the McCain bill to the floor, Lott said: "I am referring to a bill; it could be McCain, a version of McCain, it could be something else."

Again, I was quoting.

I would hope that Senator LOTT, the majority leader, would understand that when the Senate Commerce Committee marks up a piece of legislation and passes it with only one dissenting vote, a piece of legislation that is embraced by Republicans and Democrats in the Senate Commerce Committee, that that would not be work that is discarded as we move to begin consideration of a comprehensive tobacco bill.

There is a reason for a committee system in the Congress, and that is to work through committees to develop a proposal, and bring that proposal to the floor of the Senate. I would be very disappointed if the majority leader intends one way or the other to bring a piece of legislation to the floor which is vastly different than that which was passed out of the Senate Commerce Committee.

Again, I know there is a tremendous amount of lobbying going on in this town and around the country by the tobacco industry to try to resist and fight this kind of tobacco legislation. I understand that and I understand why they are doing that. Literally hundreds of millions—billions of dollars, hundreds of billions of dollars are at stake. But we must, it seems to me, in discharging our responsibility, pass a comprehensive tobacco bill. A good start in doing that would be to take the piece of legislation that we have drafted and marked up in the Senate Commerce Committee and bring that to the floor of the U.S. Senate.

In response, I think, to the aggressive initiative around this country by the tobacco industry, some are saying, "Maybe we ought to back off. Maybe we ought to not be quite as aggressive."

The fact is the origin of the tobacco legislation comes from our determination to see that this industry stops targeting America's children. And if someone thinks that they have not targeted America's children, then I say read the evidence. The Supreme Court has just ruled in a manner that requires thousands of pages of evidence to be disclosed. That evidence from the tobacco industry itself demonstrates that the only source of new smokers has been to addict America's children.

Smoking is legal. Tobacco use is legal, and will remain legal in this country. But it is not legal and should not be legal to attempt to addict America's children. That is why a comprehensive tobacco bill needs to be brought to the floor of the Senate. I urge the majority leader in the strongest terms possible to use the process that we have started here in the Senate, bring to the floor the piece of legislation I and others, with the leadership of Senator McCain, have developed, and use that as a starting point on the Senate floor to deal with comprehensive tobacco legislation.

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

Mr. DORGAN. Mr. President, the agenda for the Senate this week will be to discuss the bill that deals with the Internal Revenue Service. Among other things, this piece of legislation creates an Internal Revenue Service oversight board to help take a look at the management of various things with respect to the running of the IRS.

I spoke last week about hearings on IRS misconduct and abuse. I indicated that, while I think the IRS has many good people who work very hard to collect the taxes that our laws require to be collected in this country, it is clear from the hearings that there have also been abuses that ought never be tolerated. I commend the Chairman for holding last week's hearings. We must use these hearings as the occasion to understand what went wrong and make sure it never goes wrong again. The American people don't ever deserve an IRS that is not fully accountable and an IRS that in some cases will harass and badger taxpayers in ways disclosed during the hearings last week.

Let me just tackle one other aspect of the Internal Revenue Code and the behavior of the IRS. The IRS is required to collect the taxes needed to run the Government. Now the question is from whom does the IRS collect the amounts that are due? The people who go to work every day? The families that make a salary at work, and when they earn that salary, they have withholding taken out of their paychecks. Their taxes are sent to the U.S. Government. They don't have a choice. There is no flexibility. They work, they receive a paycheck, and they have withholding.

But there are others doing business in America that are not quite so compliant. We need an IRS that cares about what they are doing as well and makes sure they pay their fair share of the tax load in this country. Let me give you an example. In a recent year, we had a study completed by the General Accounting Office (GAO), the investigative watchdog of Congress. One of the GAO's main findings was that 46 percent of the largest foreign-based multinational firms—that is, firms with over \$100 million in assets—are transacting hundreds of billions of dollars of business in this country and paying zero in income taxes to our country. That is right—not 10 percent or 5 percent or 1 percent, they paid zero in income taxes to this country.

Now how, you ask, would a company based overseas do business in America, do tens of billions of dollars' worth of business, earn billions of dollars' worth of profit and pay zero in taxes? I mentioned 46 percent of the largest companies with over \$100 million in assets paid no taxes; 74 percent of all foreign-based corporations in the U.S. paid nothing, zero, in Federal income taxes. Let me say that again: 74 percent of all foreign-based corporations doing business in the United States paid zero in Federal income taxes to this country. How do they do it? Something called transfer pricing.

It is not only the foreign-based corporations, incidentally, that have a problem here. Most corporations that are doing business all around the globe are finding ways to minimize their tax burden through transfer pricing. Of course, not all of them do that. Many corporations pay exactly what they

owe and do the best job they can of accounting for it.

But transfer pricing means that you overprice an import into the United States in order to inflate the cost of goods sold, and therefore reduce, if not wipe out, their profit here. Or the alternative would be to underprice something you are exporting to another country in order that your subsidiary in the other country earns a very large income which would be subject low or no taxes in the other country. Because you priced it so low as you exported it here in this country, you end up making no money.

Let me give you an example of how this works. There are a couple of professors employed at Florida International University. Their names are Simon Pak and John Zdanowicz. I have met them. They have done a lot of interesting work on the issue of transfer pricing. It is a Byzantine, complicated area of tax law, so complicated that very few people pay any attention to it. Yet billions and billions of dollars of tax avoidance occur every single year. "U.S. Government is Cheated out of \$42.6 Billion in Tax Revenues in 1997, Study Reveals." Pak and Zdanowicz recently released a study showing a conservative estimate of tax loss during 1997 due to abnormal pricing in international trade was \$42.6 billion.

Let me give some examples. Tweezers—everybody knows what tweezers are. Tweezers are tiny little things you buy at the drugstore for \$1, \$2, or \$3. Tweezers were imported from Switzerland at \$218 each. Now, did somebody really pay \$218 for a pair of tweezers? Sure—a U.S. subsidiary of a foreign-based corporation. The foreign-based corporation sells the tweezers at \$218 apiece, and they are a controlled U.S. subsidiary. They can never, ever make a profit, if they so desire. So whatever that corporation decides to do in the United States, they control their pricing back and forth. They will do a lot of business, make a lot of profit, but by overpricing tweezers to the tune of \$218 apiece, they will never pay an income tax to the U.S. Government.

So they can come here and they can compete against a U.S. business that doesn't do business in 10 countries, just does business here, and when they make a profit, they must pay a tax.

How about bulldozers? Everybody knows what a bulldozer is. You drive down the road and see a construction project, you can identify a bulldozer at first glance. It is one of the biggest things you will see. Bulldozers exported to Belize for \$551. Does anybody know where you can buy a \$551 bulldozer?

Let me go through some of the rest of the examples. Safety razor blades, \$13 a piece. Television antennas—everybody knows what a television antenna is—\$1,738 from the United Kingdom. Venetian blinds—most everybody has priced venetian blinds at some point. This would be a company that sold venetian blinds abroad and sold