

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8918 SENATE JUDICIARY

MORE SPECIAL RULES FOR DOCTORS SECTION 21

The Rules of Evidence adopted by the Alaska Supreme Court govern the qualifications of experts testifying before juries in Alaska. Once again, the medical profession is seeking special rules to make medical malpractice actions more difficult for the plaintiff.

First, this section complicates the victim's life by requiring an exact match: it takes an orthopedist to testify against an orthopedist. Why shouldn't an experienced family practitioner who is qualified to do so, be permitted to testify?

Secondly, the section can be read to require board certification. In medicine, this is akin to an advanced degree. Orthopedic surgeons practicing in Anchorage are not necessarily board certified. Why should an interest group like the State Medical Board be given the power to control who testifies as an expert, rather than our courts? No other profession has this privilege.

Thirdly, the section eliminates all retired physicians as expert witness by establishing an irrebuttable presumption of incompetence one year post retirement. Alaskan victims already struggle with a conspiracy of silence under which Alaskan doctors will not testify against their colleagues. Victims must undergo the added expense of locating expert witnesses out of state. This section would further reduce the expert witness pool by eliminating retired doctors, who are less subject to peer pressure. C. Everett Koop, the retired Surgeon General of the United States, could not testify in Alaska. These special interest rules for doctors are transparently unfair.

WHAT IS A HOSPITAL? SECTION 23

Should hospitals be allowed to contract out vital patient services they are required by law to provide, to uninsured medical corporations, and wash their hands of the consequences?

For example

An infant loses both kidneys because of incompetent nursing care in a hospital. He will require weekly blood cleansing (dialysis) for the rest of his life. The hospital denies any responsibility for the substandard care, because it hired Rent-A-Nurse to supply contract nursing services. Rent-A-Nurse was low bidder for the contract because it doesn't bother with insurance. Infant loses, and state medicaid gets stuck for millions.

People go to a hospital because it is an organized, coherent institution, rather than a coaching house for private care providers. If the hospital is immunized for the negligence of routine services contractors, it has no incentive to supervise its emergency room, its radiologists, its anesthesiologists, or its lab. This is poor public policy. The Alaska Supreme Court has ruled that hospitals should be hospitals, and should stand behind the medical care they provide the public, without resort to legal gymnastics. This sensible decision should not be overturned.

AFTERWORD

The drafters of House Bill 158 are nothing if not relentless. Time after time, they seek to disadvantage the innocent victim in favor of the proven wrongdoer. They want to handcuff our discretion when we sit on juries. They want to lock the courthouse doors to victims, based on random occurrences beyond anyone's control. They want to break the backs of middle class victims who have the courage to seek full compensation, but who guess wrong about the amount of the verdict or the complicated fault allocation. They want to coddle corporations proven by clear evidence to have acted maliciously. They want more special treatment for the medical profession. They want tax breaks, interest free loans, installment plans, insurance benefits, tortious immunities—all for the bad actor, the certified wrongdoer. They want every injured worker to be punished for his or her employer's negligence.

Who are these victims, and why are they deserving of harsh treatment? They are you and I, and our children, and our children's children. They are those among us who will one day suffer tragedy. They are tomorrow's Ted Stevens or Arliss Sturgulewski, politicians who lost spouses because of negligence and became claimants. They are rich and poor, young and old. They are our most productive workers in our most hazardous jobs. They are the roustabouts and the roughnecks. They are us. The rights we treat cavalierly are our rights.

Alaskan legislators have already implemented drastic changes in favor of defendants. Alaskan cities breathe easier, because "deep pocket" liability is no more. The insurance industry is not in crisis. We now know from experience that measures limiting victims' rights do not reduce premiums.

What we are left with in Alaska is a small group of extremist "tort reformers" who advocate this legislation based on their deep animosity to lawyers and lawsuits, period. These special interests have no fidelity to our constitutional jury system, but would destroy it with the death of a thousand cuts.

Since their bill is technical and complex, legislators may not grasp how drastically it affects the families in their districts.

If this happens, Alaska will have passed the most radical anti-victim legislation in the United States. Alaskans will have fewer and lower quality civil rights than other Americans and we will have done it to ourselves, not for any good reason, but merely to make Alaska a more profitable if minuscule niche in the national insurance market. What a shame.

House Bill 158 is harsh legislation which kicks innocent Alaskans when they are down and out. It grants Alaskans no commensurate benefit, such as a mandatory 20% reduction in auto and liability insurance premiums. Let us hope that our legislators find the courage to stand up for individual Alaskans against those who would rob us of our rights.

THE FOLLOWING HAVE SPOKEN IN OPPOSITION TO
THIS ANTI-VICTIM LEGISLATION OR ITS
PREDECESSOR LAST SESSION

ALASKA NETWORK ON DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

ALASKA POLICE DEPARTMENT EMPLOYEES ASSOCIATION

TRUSTEES FOR ALASKA

AMERICAN ASSOCIATION OF RETIRED PERSONS, ALASKA

ALASKA STATE AFL-CIO

ALASKA ENVIRONMENTAL LOBBY

ALASKA WOMEN'S LOBBY

NEA-ALASKA

ALASKA HEALTH PROJECT

DES ACTION

ALASKA PUBLIC INTEREST RESEARCH GROUP

Addressing the
Myths & Misconceptions
about Personal Injury & the
Civil Justice System

Compiled by
The Alaska Academy of Trial Lawyers

January 1995

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Preface

We have recently celebrated the Bicentennial of the Bill of Rights of the American Constitution. That Constitution and those of the States, including Alaska, declare as fundamental, the right to jury trial and equal access to civil justice for all.

And yet today our civil justice system and the rights of injured victims and consumers are under attack. Politicians in search of solutions to such complex matters as runaway medical costs, the budget deficit and America's competitiveness in the market, oftentimes skew statistics to perpetuate unfounded myths and misconceptions about our legal system in an attempt to pin the problem on lawyers and the injured victims they represent. The multi-million dollar propaganda efforts of insurance companies and their corporate colleagues have borne fruit in biased judges, alienated juries, regressive state and federal legislative efforts, and a social environment permeated by an uncaring attitude toward the rights of the injured victims.

For more than a decade, the legislative debate over the "liability insurance crisis" has assumed that a crisis existed and focused on restriction of the rights of victims of negligence to recover fair compensation to resolve that crisis. Despite any hard data to support their claims, representatives of the insurance industry have asserted that restriction of victims' tort rights will result in lower liability insurance rates. In response to these assertions, the Alaska Legislature has adopted some of the most severe restrictions of those rights of any state in the country.

In 1989, then Speaker of the House, Sam Cotton, at the request of several fellow representatives, formed the Alaska Liability Insurance Task Force. The task force was comprised of legislators and members of medical, insurance, consumer and legal organizations familiar with liability insurance issues. The most significant finding from the data collected by the task force was that, with some exceptions, there is no liability insurance crisis in Alaska.

Although there were minor differences in the conclusions reached in the various studies collected by the Liability Insurance Task Force, the general consensus was that, at best, restrictions on the rights of victims to receive fair compensation through the tort system have had only a "modest", if any, impact on liability insurance rates. More importantly, the consensus among the scholars was that state legislatures should direct their attention away from the tort system and towards alternative solutions to resolving any existing liability insurance problems.

What these studies did not address is the extent to which the public is forced to financially support those tort victims who have been disenfranchised from the legal system because of existing restrictions on tort recovery and the extent to which this gap would widen if further restrictions on tort victims' rights were enacted.

ACCESS TO JUSTICE

RIGHT OF TRIAL BY JURY -- THE FOUNDATION OF OUR SOCIETY

A fundamental guarantee in the Alaska State Constitution.

• A Guaranteed Right: Article I, Section 16 holds that in civil cases where the amount in controversy exceeds \$250, the right of trial by jury is preserved.

The jury, as conscience of the community, promotes safety and equity.

• Juries Promote Safety: Over 5 million Americans serve on juries each year. As the conscience of the community, their decisions determine guilt or innocence, safety and security, life and death. Countless improvements aimed at preventing injuries and saving lives might never have occurred without trial by jury and its time-tested ability to bring about changes for the better.

• A Triumph of American Democracy: According to the consumer group, Public Citizen, "The right to collect damages through the civil justice system is one of the great triumphs of American democracy. It allows anyone, no matter how poor, to challenge the largest corporation or government agency and reclaim compensation for wrongful injuries. It forces wrongdoers to change their products and practices to prevent further injuries and avoid further liability."

Critics of the jury system are the most likely to request a jury trial.

• The Ultimate Irony: The loudest critics of the jury system are insurance companies and the defendants they represent in personal injury litigation -- corporations, local government, and doctors. Ironically, the party most likely to request a jury trial in personal injury litigation is the defendant. In fact, insurers almost always demand a jury trial.

TORT RESTRICTIONS DO NOT REDUCE INSURANCE RATES

Evidence indicates that tort restrictions have no significant impact on insurance premiums or availability.

• Insurance Services Office (ISO) Says "NO REDUCTION": A 1987 ISO study determined that tort "reforms" enacted in 1986 would have little or no impact for the majority of liability claims filed with insurers. In October 1986, ISO determined that

its rates would not reflect recent state tort restrictions because ISO was unable to determine any cost effect of the tort law changes.³

• Insurers Say "NO REDUCTION": Insurers required to provide Washington State Insurance Commissioner Richard Marquardt with evaluations of the effects of tort reforms on proposed rate filings indicated that there was no way to make such a determination, and that the 1986 law would have a minimal effect on rates. Responses from insurers in other states indicate that tort restrictions do not resolve insurance price fluctuation, reduce rates or increase availability.⁴

• Washington State Insurance Commissioner Says "NO REDUCTION": In 1987, Commissioner Marquardt told a U.S. House committee, "It is difficult, if not impossible, to pin a price tag on tort reform or to even assess accurately its effect on insurance availability and affordability. Based on our research, by the middle of 1986, general liability rates had begun to stabilize throughout the United States -- not just in the states that had adopted tort reform."⁵

• 1991 Washington Insurance Commissioner Report Says "NO REDUCTION": A 1991 report by Marquardt to the legislature notes that insurance rates in recent years have stabilized and coverage is more readily available, however, tort changes cannot be credited as the reason. Insurers still find it difficult to quantify the impact tort reform on insurance rates. A 1989 law requiring insurers to consider investment income in setting rates was projected to have a much greater impact on insurance rates than changes in the tort system.⁶

• Best's Says "NO REDUCTION": A 1989 Best's Review article on a presentation by David B. Mathis, CEO of Kemper Reinsurance, quoted Mathis as saying, "The only way to achieve stability in the market is through adequate price levels. First of all, despite the publicity it has received, tort reform has turned out to be a non-event in terms of its impact on the big picture."⁷

A case history -- medical negligence restrictions have little impact on rates.

• 1978 Limitations Fail: A study of medical negligence legislative limits passed in various states from 1974 to 1979 concluded that the changes, either individually or collectively, did not reduce or stabilize insurance rates.⁸ Following adoption of MICRA in 1975, California's medical liability insurance premiums continued to rise (increases of 181 to 117% between 1980 and 1986.) Indiana, which adopted the most restrictive medical negligence laws of any state, had premium increases of 53% to 116% during the early 1980s.⁹

- The Crisis of 1985-1986: Despite the fact that tort restrictions had little or no effect on resolving the so-called crisis of the 1970s, a number of states passed laws restricting medical negligence actions during the mid-1980s when liability premiums began to skyrocket.

- Rate Reduction Not Due to Liability Restrictions: Nationwide, medical liability premiums began dropping early in 1989 due to a reduction in claim filings and a reduced increase in the costs to settle claims.¹⁹

THE LITIGATION CRISIS: DEBUNKING THE MYTHS

Personal injury cases represent a small percentage of the courts' workload.

- The courts are overburdened with over 13 million civil lawsuits filed in state courts each year: This 13 million dollar figure includes millions of routine cases such as small claims, traffic and other ordinance violation cases, domestic relations, estate and contract matters. The most recent figures from the National Center for State Courts show that the number of tort cases filed in state courts was less than half a million, or less than three percent of all state filings.

- Federal Courts: Studies of federal tort filings show lawsuits are on the decline. Over the last thirty years, tort cases as a percentage of federal civil cases dropped by nearly half, from 36.4 percent in 1960 to 20.1 percent in 1990. Product liability litigation is shrinking even faster. It has been reported that federal product liability cases, other than those involving asbestos, have been shrinking steadily in recent years, falling 40 percent between 1985 and 1990.

If there is a "litigation explosion," it is being driven by businesses suing businesses, not by personal injury actions.

- Businesses Suing Businesses: According to a University of Wisconsin study, federal litigation between corporations has increased astronomically, growing more than 1000% between 1971 and 1986.²⁰

- State Courts: According to the National Center for State Courts, tort filings are not increasing at a faster rate than other major categories of civil filings. The most dramatic increases in civil cases are real property and contract cases, not torts.²¹

- Federal Courts: Nationally, between 1979 and 1987 contract cases filed in Federal District Courts more than

tripled and property cases quadrupled -- far exceeding growth in personal injury filings.¹³

Most cases are resolved prior to trial.

• Most Cases Are Settled: Only 5% of all personal injury cases filed in state courts go to trial. Complex actions, such as medical negligence cases, are more likely to go to trial than cases such as automobile personal injury (11% of medical negligence cases filed result in trials). Most cases are settled, withdrawn or dismissed prior to trial. 6% of all personal injury cases are uncontested by the defendant.¹⁴

LARGE JURY VERDICTS ARE UNCOMMON

Huge jury verdicts, such as million dollar verdicts, are the exception rather than the rule.

• Huge Verdicts are Rare: Huge personal injury payouts are a rarity. The largest settlements and verdicts are made to the most seriously injured victims.¹⁵ If anything, juries are very cautious and reticent to adequately compensate injured persons. The multi-million dollar advertising campaigns of the insurance industry have used anecdotal information to make the public feel guilty about fairly compensating persons negligently injured by others.¹⁶

• Million Dollar Verdicts are Uncommon: According to Business Week, "Over the past 14 years in our nation of 240 million people there has been only 1,642 awards of \$1 million or more. Furthermore, two-thirds of the 1,642 cases involved victims who suffered either permanent paralysis, brain damage, amputations or death."¹⁷

• Alaska Personal Injury Verdicts are Lower than National Verdict Average: Alaska personal injury verdicts currently average 3.1% below national verdict values.¹⁸

• The Most Severely Injured Persons Receive the Higher Verdicts: Product liability and medical negligence victims generally sustain more severe injuries and are more likely to receive a larger jury verdict. While the 1988 average verdict for personal injury litigation in U.S. state courts was \$89,622, the highest average verdict was in the area of medical negligence (\$146,811).¹⁹

Jury verdicts can be reduced -- the actual payout to the plaintiff may be less than the jury verdict.

• Verdicts Can be Reduced on Appeal or Settlement: The actual payout to the plaintiff is reduced after the trial verdict in about 20% of cases. The larger the verdict, the greater the likelihood that the verdict will be reduced. Of the cases where a verdict is reduced, the average actual payout is about half (53%) of the original verdict amount.²⁰

"HORROR STORIES" MAKE BAD PUBLIC POLICY

Use of outrageous and atypical examples to create the impression of abuses and/or weaknesses in the civil justice system are common. Cases cited by tort critics alleging frivolous lawsuits and excessive jury verdicts are very often misleading and inaccurate.

Some examples of "horror stories":

• The Pure Fabrication -- The Lawn Mower and the Hedge Story: A widely-circulated story given in the mid-'80s as an example of our litigious society told of a man who successfully sued a lawn mower manufacturer for injuries suffered while using one of their lawn mowers to trim his hedge. In fact, this case is fictitious. It does not exist. It was a fabrication of tort reform proponents.

• Failure to Disclose All Pertinent Facts -- The Phone Booth Near the Road: In 1986, President Reagan noted that it was absurd for a California man to recover damages from a telephone company because he was in one of their booths when it was struck by a drunk driver." The facts conveniently left unstated included: 1) The company knew the booth was too close to the street because it had been hit before; 2) complaints had been filed with the telephone company stating that the booth was difficult to exit because the door jammed; 3) the trial court had granted a lower court summary judgment to the company, but the California Supreme Court remanded the case to the lower court because the risk of injury was foreseeable by the telephone company; and 4) the case was ultimately settled."

• Not Appropriately Placing Blame - Beware of Horse Manure: In 1987, a CBS "60 Minutes" segment focused on a lawsuit against a ladder manufacturer in which the plaintiff recovered \$100,000. According to the manufacturer, the plaintiff was injured when the temperature increased from 20 to 40 degrees and the ladder slipped because it had been placed in a manure pile. "We didn't warn him about the viscosity of horse manure," said the manufacturer. To their credit, "60 Minutes" ran a follow-up segment in which a number of

alleged tort horror stories were recuked. In re-examining the ladder story, reporter Ed Bradley noted, "Several jurors...told us the viscosity of horse manure had nothing to do with their verdict. They said they were persuaded by the plaintiff's contention that the ladder was defective, and that's why he was injured."²³

• The Tort System Works -- The Psychic and the CAT Scan: A Philadelphia jury awarded \$1 million to a woman who claimed she lost her psychic powers after undergoing a CAT scan. In fact, the woman had warned the doctor of previously having had an adverse reaction to a similar procedure. She then suffered anaphylactic shock when the procedure was performed. The jury that returned a \$988,000 verdict had been instructed to disregard the woman's alleged loss of earnings because she was no longer able to "read auras." The judge found the verdict excessive and ordered a new trial. This case demonstrates that the safeguards in the process work."

THE COSTS OF PERSONAL INJURY

INJURED PERSONS BEAR THE BURDEN OF PERSONAL INJURY

The injured person bears the brunt of the cost of injury.

• The Injured Person Pays First: Whether or not an injured person is reimbursed for a personal injury from another source, the initial cost of the injury is borne by the injured person and his or her family. The costs of injury include medical bills, lost wages and property damage. Personal injury often causes additional losses, such as the inability to pay bills (the house, the car), increased debt obligations and interest payments, and increased stress on family relationships. The burden of locating reimbursement for medical, wage loss, and other costs of injury falls on the injured person.

• When Defendants Don't Pay and Victims Can't, Taxpayers Do: Most personal injury cases involve significant medical and related expenses. When the victim can't pay and the defendants aren't required to fully compensate for injuries, the uncompensated cost of care is usually borne by government agencies -- in other words, by you and me as taxpayers.

• 38% of Economic Damages are Paid Out of Pocket: The total annual economic loss associated with nonfatal injuries in the U.S. is \$175.9 billion. 38% of this total economic burden is not reimbursed by any outside source and is paid for out-of-pocket by those who are injured. 64% of wages lost due to injury are not

reimbursed and are borne exclusively by those injured.⁴⁵

Personal injury liability compensation does not pay for the actual cost of injuries.

• Only a Small Number of Victims Receive Personal Injury Liability Compensation: Only 10% of all accident victims receive personal injury liability compensation. The personal injury system plays a greater role in compensating motor vehicle injury victims. Those injured in motor vehicles are more likely to receive personal injury liability compensation (31%) compared to persons injured in some other manner.⁴⁶

CIVIL JUSTICE SYSTEM PROMOTES SAFETY IN AMERICA'S ECONOMY

TORT LAW IMPROVES AMERICAN PRODUCTS

The tort system saves lives, reduces injuries and promotes public safety.

• Product Liability and Tort Law Promote Safety: There are huge benefits of the current tort system. Businesses devote greater attention to safety. There is a heightened consumer perception that products are safer and of higher quality. Workplace and other injuries have been reduced resulting in thousands of lives saved and millions of injuries prevented. The existence of these very large benefits should give policymakers cause for careful reflection as they are pressed to weaken product liability and tort law in general. Reducing the costs of the system may reduce the benefits and leave society worse off.⁴⁷

• The Tort System Contributes to a Competitive Society: Without a strong tort law, the ethical corporation would have a competitive disadvantage and would be tempted to put profits before public safety. The American focus on safety in conjunction with punitive damages will produce the top quality products needed to compete in the international marketplace. "Our analysis suggests that the rules of product liability make a good deal of economic sense."⁴⁸

• Punitive Damage Awards Do Not Undercut United States Competitiveness: Perhaps nothing is more grossly exaggerated than claims about punitive damage awards, particularly in product liability cases. The most comprehensive study ever conducted on punitive damages in product liability cases -- a survey of the past 25 years -- indicated just 155 cases in the entire country. That's only ten per year for the entire country. The

median punitive damage jury award was \$1.5 million, with post-trial activity sharply reducing the median amount actually paid to \$250,000. The study also found that 82 percent of businesses assessed punitive damages subsequently implemented safety measures such as product recalls or improved warnings and instructions.²⁹

• Harmful Products are Removed or Altered: Examples of unsafe products which have been removed from the marketplace due to the tort system include the Dalkon Shield, asbestos, flammable baby clothes, and unsafe infant formula. Examples of products redesigned to improve safety resulting from the tort system include the Ford Pinto, safety devices on machinery and childproof caps.³⁰

• Product Liability Expense Adds Little Cost to Consumer Goods: A new study by the National Insurance Consumer Organization (NICO) found that product liability expenses added but a tiny amount to the cost of consumer goods. The total cost of product liability insurance amounts to 0.14 percent of the cost of the more than \$1.8 trillion worth of retail sales in the U.S. in 1991. The study used insurance industry data which broke out liability premiums as a separate line item for the first time.³¹

Insurers reap benefits while projections of future losses have decreased.

• A Shift Toward Defendants: During the mid-80's judicial decisions in product liability cases nationwide shifted toward defendants. Dismissal of product claims and new legal grounds for defendants have increased during the past half decade.³²

• Insurers Continue to Make Big Profits: While projections of future losses have decreased, insurers' reserving practices and insurance rates have not. Why? Insurers are focusing on restricting state and federal liability laws. They can't claim a need for change while recognizing reduced losses and greater profits.³³

• Insurers Use Natural Disasters to Raise Rates: The day Hurricane Andrew rolled into Miami, a top insurance company executive for American International Group, issued a memo to regional presidents and vice presidents saying "This is an opportunity to get price increases now. We must be first and it begins by establishing the psychology with our own people."³⁴

Claims that the tort system stifles innovation is a ruse.

• Dangerous Products Kept From Market for Good Reason: Tort restriction proponents claim that the threat of litigation keeps products off the market. When Consumer Union examined the list of products being held from the market, the reasons they were pulled of the market were based on valid safety concerns. For example, the Jeep CJ-7, which tends to roll over at low speeds, and an anesthesia gas machine for which the manufacturer had failed to conduct tests of the design of critical components, were on the list of products pulled from the market because the tort system was "stifling innovation".¹¹

• Corporate Report Says Liability Suits Do Not Impede Competition: "The most striking finding is that the impact of the liability issue seems far more related to rhetoric than to reality...For the major corporations surveyed, the pressures of product liability have hardly affected larger economic issues, such as revenues, market share, or employee retention...Where product liability has had a notable impact - where it has most significantly affected management decision making - has been in the quality of the products themselves."¹² In addition, numerous federal agency studies of industry competitiveness conducted during the 1980's fail to mention the liability system.

The cost of liability claims is minor compared to the GNP.

• The Cost of Liability Claims v. U.S. Productivity: The total compensation from tort liability claims to persons with nonfatal traumatic injuries in the U.S. amounts to only three-tenths of one percent of the Gross National Product of the United States.¹³ The total cost of all commercial liability insurance premiums in the U.S. in 1990, including general liability, automobile liability, and umbrella insurance was only \$43 billion, less than 1% of the U.S. Gross National Product.¹⁴

MEDICAL NEGLIGENCE FACTS vs. MYTH

MEDICAL NEGLIGENCE CLAIMS -- THE REAL FACTS

Lawsuits protect the public -- the benefits outweigh the costs.

• Respect Patients' Rights at Our Peril: One very important aspect of medical negligence litigation is the useful examination of the practice of medicine itself. Because the buyer of medical care cannot be expected to evaluate the quality of medical care, the market cannot adequately identify incompetent health care providers. "The data suggest that to eliminate or seriously restrict

a patient's right to file a malpractice claim is a step we would undertake at our peril."⁹

- Medical Negligence Standard of Care: Under Alaska law, a physician is responsible for the harm caused when the physician fails to use reasonable care in providing medical care. Other professionals, such as architects, bankers, and lawyers are also required to exercise reasonable care in their professional activities.

The frequency and severity of medical negligence claims has remained relatively constant.

- Closed Claim Study in Minnesota: The Minnesota Insurance Commissioner conducted a study of medical negligence insurance claims filed in Minnesota, North Dakota and South Dakota. The study examined all claims filed from 1982 to 1987 for the two largest medical negligence insurers in the region. 27% of the claims were closed with a payment average of \$54,629; the median was zero. Only one-tenth of one percent of the claims resulted in a payment exceeding \$1 million, and only 4% exceeded \$100,000. Of the 3% of cases that actually went to trial, the defense prevailed in 81 percent of them. In the 20 favorable jury verdicts for the period, no pain and suffering damages were awarded. No cases involved punitive damages. A final note on the Commissioner's study: Saint Paul announced a rate cut of 25 percent on its medical malpractice premiums in Minnesota.¹⁰

- Unjust Payments are Rare: A new study of medical malpractice cases finds that, despite popular belief, unjustified payments are rare. The study is one of the first systematic attempts to assess the quality of care in malpractice cases and was based on 3,201 cases filed in New Jersey over the past 15 years. The data came from the state's doctor-owned insurance company and the authors contend that their findings are relevant to the nation as a whole. In concluding that unjustified payments are not the norm, the study contradicts the conventional wisdom among doctors, which is that malpractice litigation is a lottery and that verdicts often depend on the whim of jurors.¹¹

- Stable Rate of Frequency: The Minnesota closed claims study identified little measurable change in claim frequency over a six year period. The frequency rate was actually greater in 1983 than in 1987 and the average payment appeared to be decreasing over the period of the study. In fact, the study concluded the "data does not substantiate the litigation explosions assertion."¹²

MEDICAL NEGLIGENCE -- DEBUNKING THE MYTHS

Liability claims without merit are not compensated, and the size of the payment is commensurate with the severity of the injury.

- The System Works: The findings of a closed claims study of obstetric claims from a large physician-owned insurance company between 1982 and 1988 indicate that non-meritorious claims were not compensated. Where a claim was paid, poor physician judgment was the primary source of error and "the size of the settlement was commensurate with the seriousness of the injury." The study concluded that "These results should help to reassure physicians who are concerned that the tort process itself is unjust. Frivolous claimants do not, as a rule, prevail."¹

Rather than seeking large settlements, most injured patients sue for other reasons.

- Lack of Communication -- What Really Happened: According to a recent survey of 137 families who filed suits against physicians, the primary reasons for pursuing litigation were to find out what happened.² Poor communication by medical personnel with the patient was often cited by respondents. In addition, a prior relationship with a medical provider did not protect the provider from legal action. Physicians are finding that apologizing reduces litigation and promotes quick resolution of claims. Douglas Phillips, President of the Physicians Insurance Association of America, said that "Communicating with the patient is probably the most important aspect of loss prevention."³

Very few incidents of medical negligence result in a claim.

- Few Negligently Injured Patients Receive Liability Compensation: Only one in every ten incidents of medical negligence result in a liability claim, and only one in twenty-five receive compensation through the liability system.⁴ Is this evidence of litigiousness -- that 70 or 80 percent of the people injured by an incompetent or negligent act do nothing about it?

Elderly and minority patients are at a greater risk of being injured by medical negligence.

- Increased Risk of Being a Negligence Victim: In a study of New York hospital discharges, patients with the highest risk of being injured due to medical negligence included elderly patients, minority patients in hospitals that treat a high proportion of minorities, patients in

government-operated hospitals and patients in non-teaching hospitals."

PHYSICIAN DISCIPLINE SYSTEM DOES NOT REMOVE BAD DOCTORS

The cause of medical negligence is medical negligence -- negligent doctors committing preventable errors.

• New York Study: A Harvard study reviewed 30,121 hospital patient discharges from 51 New York state hospitals in 1984. Of these, 280 patients included an adverse event which was caused by negligence. It is estimated that 27,177 cases of medical negligence occurred in New York during 1984, resulting in 6,895 deaths and 377 instances of severe permanent disability. Only 1 in 5 injured patients filed suit and only 1 in 16 received any liability compensation.⁹

• Many Deaths are Preventable: Physicians reviewing 162 hospital deaths in 12 hospitals found that in at least 14% of the cases examined, the deaths could have been prevented. In addition, a small number of factors caused most of the preventable deaths.¹⁰

A small number of physicians are responsible for most of the negligence.

• Florida: 44% of the physicians practicing medicine in Florida have had 2 or more liability claims filed against them. This group is responsible for 40% of the total claims paid out from 1973 - 1985.¹¹

• Illinois, Pennsylvania and Texas: 24% of all physicians practicing in Cook County, Illinois (sued 6 or more times) were defendants in 36% of the medical negligence litigation from 1971 to 1986. 57% of the physicians were not named in any lawsuit and 79% of those sued during this period were named only once or twice.¹¹ Studies in Pennsylvania¹² and Texas¹³ had similar results.

Medical disciplinary boards do a very poor job of regulating physicians.

• New York: The New York Office of Professional Conduct takes an average of 216 disciplinary actions annually compared to an estimated 27,000 cases of medical negligence occurring each year.

• A National Disgrace: An estimated quarter million injuries and death resulted from medical negligence in American hospitals in 1988. Medical disciplinary boards in the U.S. issued an annual average of only 1,481

serious disciplinary actions against physicians from 1987 to 1990.¹⁴

MEDICAL NEGLIGENCE INSURANCE -- COSTS AND PROFITS

Medical liability insurance is less than 1% of the total cost of health care.

• Premiums vs. National Health Care Costs: Insurance companies argue that liability expenses are a primary factor in skyrocketing health care costs. The facts refute this allegation. In 1989, medical negligence insurance premiums in the U.S. were \$5 billion.¹⁵ National health care expenditures for 1989 were \$604 billion.¹⁶ Thus less than 1% of the national cost of health care can be attributed to medical liability premiums.

• The Texas Experience: A recent study commissioned by the Texas Hospital Association, the Texas Medical Association and the Texas Trial Lawyers Association concluded that medical liability costs -- insurance premiums and damages from lawsuits -- make up less than 1 percent of health care expenditures in Texas, consistent with national findings. The study found that reforming the medical professional liability system would have minimal cost savings impact on the overall health care delivery system in Texas.¹⁷

• Losses Paid vs. National Health Care Costs: Nationwide, only 1% of medical negligence insurance premiums earned -- \$2.14 billion or one third of 1% of the cost of health care -- were paid out for all losses in 1989.¹⁸ Insurers are retaining 99% of the premiums earned.

Medical negligence insurance is highly profitable for both private and physician-owned insurance companies.

• National Data: In 1989, the net profit of medical negligence insurers in the U.S. was 27.3 cents for every dollar of premium earned. From 1985 to 1989, insurers' annual average profit on medical negligence insurance was 9.2% of premiums earned.¹⁹ Between 1985 and 1990, the net worth of medical liability insurance companies more than doubled from \$835 billion to \$1,691 billion.²⁰

• Minnesota Study: A study of medical negligence closed claims from 1982 to 1987 by the Minnesota Commerce Commissioner found no increase in claim frequency, less payments and less expenses. Yet, premiums tripled resulting in a determination that St. Paul Companies --

the nation's largest medical liability insurer -- was substantially overcharging policyholders. St. Paul agreed to refund \$1.5 million to physicians in Minnesota.³¹

• Physicians Sue Insurer For Excessive Premiums: In 1989, physicians in Colorado won a \$4.1 million judgment against PHICO Insurance Company. The court found that the insurer created a sense of crisis and panic to justify a large premium increase.⁶² Physicians in Virginia also sued PHICO for illegal conduct when the company canceled thousands of doctors policies in 1986.

• Physician-Owned Companies: An investigation by the Arizona New-Times revealed that MICA, a doctor-owned company, paid out only 30 cents of every dollar it took in. In addition, the company received a 36% rate hike in 1987. Despite a reduction in lawsuits in 1987 and its own data showing claim frequency decreasing, the company still projected increased lawsuits for 1988.

MEDICAL NEGLIGENCE RESTRICTIONS ARE NO SOLUTION

Tort restrictions will not resolve the problems of access to health care.

• The Tail Wagging the Dog: Due to the high cost of health care, a large number of Americans have no health care coverage. Blaming medical liability costs, which are less than 1% of the cost of health care, for the problem of health care access is ludicrous. Altering less than 1% of the health care costs would have no significant impact on the total cost of health care.³²

• Reasons for Costs of Medical Care: There are numerous reasons for the increased cost of medical care, including technological advances, increases in population, increased wages as well as general and medical inflation. In a recent GAO report, medical liability costs are not even mentioned as a contributing factor of increasing health care costs.³⁴

• Restrictions on Compensation Don't Work: Conventional wisdom about medical liability is not supported by the facts. Limits on verdicts and attorney's fees will not curb the incidence of litigation. Nearly 80% of the injured patients receiving liability compensation have economic losses which exceed the compensation received. This percentage is even greater for settlements. Limits on compensation will only exacerbate the current short

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ALEC Proceedings



*The Remarks of the People Setting the Terms of the Debate
'for the States and the Nation'*



Congressman Henry Hyde ♦ Congressman Charlie Stenholm ♦ George McGovern ♦ Virginia Governor George Allen

Honorable William F. Barr ♦ CORE Chairman Roy Innis ♦ Congressman Jon Kyl ♦ Congressman Tim Penny

Texas Comptroller John Sharp ♦ Jersey City Mayor Bret Schundler ♦ Wall Street Journal Editorial Writer John Fund ♦ Honorable Edwin Meese, III

Arizona Governor Fife Symington ♦ Congressman Dick Army ♦ Congressman Joe Barton ♦ SCNE President Robert L. Woodson

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20TH ANNUAL MEETING
AUGUST 1993
TRAVERSE CITY, MICHIGAN



THE HONORABLE HENRY HYDE UNITED STATES HOUSE OF REPRESENTATIVES

As one of the founders of ALEC, Congressman Henry Hyde (R-Ill.) was given the honor of convening ALEC's 20th Annual Meeting. In his remarks, he spoke of restoring the "culture of democracy" to America, stating his belief that people have developed a cynicism about Congress largely due to the way campaigns are run. Hyde explained that legislators must protect the inalienable rights of everyone, not just a few, and that freedom is what sets America apart, and has made it the envy of the world. He stressed that effort is required not only by legislators, but also by the electorate, to maintain and protect our tremendous freedoms.

Good morning. Thank you. It's my honor to call to order the 20th Annual Meeting of the American Legislative Exchange Council. As a founding member of ALEC, I am really delighted to be here this morning. I have been asked to say a few things about ALEC and the challenges facing all of us as legislators.

I think it's true that most of our institutions are in crisis, as far as the public perception is concerned. Certainly in Congress we are greeted with cynicism, if not contempt, and as we look around we see phenomena that indicate a great dissatisfaction by the public as far as legislators are concerned.

I think the Ross Perot phenomenon is an example of people who are distressed and dissatisfied with the current state of affairs, and who look with great suspicion and cynicism at their elected leaders. I think the term limits movement is another indication of the public's perception that, somehow, service in a legislative body is corrupting. I believe that perception underestimates the complexity, the great inherent difficulty, of trying to balance the equities between your constituency, between your state, between the country, and between your conscience.

We're all familiar with Edmund Burke's famous letter to the electors of Bristol, where he told them that while a legislator's highest fidelity is owed to his constituency, his conscience is owed to no one. And so we struggle with that constantly, trying to do what's right, and having the age-old dilemma of trying to find out what's right, being a most difficult thing.

But I think in terms of contributing to the public cynicism about legislators, many times we are to blame because of the way we conduct campaigns. There's a definite loss of civility in political interchange. We attack the institutions. We, in Congress, run against Congress, saying that "I am not like others." We are the original Pharisees; the other guys are bad, but I'm Pericles reenacted.

And, of course, all of this has its effect on the public, and I don't think it's healthy. I don't think the rule of law is surviving. I think we need a new culture of democracy. We need to understand that effort is required not only by ourselves but by the electorate as well. We have to make them care about the issues, about the candidates, and make them take the effort to register and to vote. We have to again insist that the state exists to serve society; not the other way around.

And we all must be willing to defend the inalienable rights of everybody, not just some people, but everybody. We have to restore the link between rights and responsibilities. I think that the greatest of all documents that preceded our Constitution was the Declaration of Independence, which is our

country's birth certificate. It says, in so few majestic words, where our rights come from...they are inalienable and they are an endowment from the Creator. And I think these things are important.

I think we all have to understand that causes exist for which we are willing to lose our office. Things that are important to us, to our consciences. We are not simply ombudsmen, but we are people who are here to bring a vision and a sense of values to our job.

I well remember in January of 1978, the Illinois Congressional delegation was invited to Lincoln's Memorial in Washington to act as an honor guard for the Vice Premier of China, Deng Xiaoping, who was making his first visit to America. He was going to place a wreath at the feet of the Great Emancipator.

And I wanted to see this little man, who is about five foot two, 72 years old then, a very sprightly, energetic person...because he represented one billion people and 3,000 years of history. I wanted to see what he looked like and to enjoy the moment of seeing somebody who represented a billion people and 3,000 years of culture that our country didn't have.

And as he came along, and I shook his hand, I thought to myself, what does he want from our country? What does he want from America, which is about 200 years old, lacking the cultural homogeneity of China. A country made up of Greeks and Poles and Mormons and Catholics and Baptists and atheists and agnostics and blacks and Hispanics and Swedes, and all sorts of types of people and cultures, who have come to America to make this country what it is.

And I thought of the sign language term for America, which is a perfect example of the melting pot. And I asked myself why would this great country, with its tradition and its culture and its history...why would it come to America for anything?

And it occurred to me: He wants us to drag his country two centuries into the 20th and nearly the 21st century. He wanted access to our universities, access to our technology. He wanted trade with the United States. He wanted America to bring his country forward into the modern era.

And does it occur to you why we have these things and his great country does not? And all of a sudden it dawns on you: There's a one word answer...freedom. America's great freedom.

The fact that you can be born in Spokane, Washington, and go to school in Pensacola, Florida, shows the mobility of this country and the accessibility of information. The junior colleges, the colleges, the libraries, the media, the explosion of information, the opportunities that are available to anybody in this country who has the energy, the will and the desire to make something of themselves.

It is this tremendous freedom that has given this country the standard of living that is the envy of the world, the creativity that is the envy of the world, and that other countries try to emulate. So freedom, which was so painfully won for us and so painfully maintained, is the distinguishing, the defining feature of the United States of America from the rest of the world.

And so we have a role in the maintenance of that freedom and in the enhancement of that freedom. Charles de Gaulle once said France would not be true to herself if she weren't engaged in some great enterprise.

Well, we're not true to ourselves if we're not engaged in some great enterprise. But every member of every state legislature, and every member of Congress, every member of a city council, and of a library board and a zoning commission, are engaged in the great enterprise of governance. Liberty, under God, with freedom for all, which is indeed a great enterprise. ■



ARIZONA GOVERNOR FIFE SYMINGTON

Arizona Governor Fife Symington addressed the explosion of civil lawsuits and the desperate need for tort reform in the states. He notes that a system that had once relied on specific contracts that people honored has evolved to a system where the obligation of the parties are intentionally obscured. As jury verdicts become larger and more frequent, Symington notes that the economy suffers because products and services cost more. Symington also addresses the human toll of a deteriorating civil justice system, believing that we have become more "contentious, litigious, sensitive and intolerant," as a culture. Symington believes the work that has been accomplished in Arizona in tort reform is an example of what other states can do to restore their civil justice system.

Thank you. It's great to be here. And members of ALEC, congratulations on your 20th anniversary.

I am really blessed as a governor to have an extraordinary group of individuals in our legislature, in our leadership in the legislature, who really work well together. We focus on issues well together, we plan ahead. We do things that frankly Arizona hasn't seen in twenty years, and I'm very, very proud of the leadership. It's extraordinary because for many years we have been unable to have short, productive sessions; we've had long and, I think, sometimes very unproductive sessions. But this year I believe is the first time in some twenty years, Brenda, (Ariz. Representative Brenda Burns) that we got in and out in about ninety days and we passed our budget in 65 days

The year prior to that occurrence we went right up to our constitutional deadline of June 30, and had what some would refer to as an altercation at the end because I wanted to have tax reduction. My fellow believers in limited government and reduced regulation in the legislature wanted to have a tax reduction, but we couldn't get it through the Senate, and so we were within hours of shutting state government down. We had the National Guard ready to take over public safety and the prisons, and we were going to literally close our state government down because, unlike California, we don't issue warrants, we can't keep going, we've got to close. And I remember having a conversation with Brenda; Mark Killian, the Speaker of the House; and John Greene; and Tom Patterson in the Senate, and I looked at them and I said, "You know, my greatest fear is if we shut government down we're not going to be missed."

Well, fortunately, we didn't have to shut it down and we got our budget passed, but it was really tough. But it happened. What's happening in my state is happening because of teamwork, because of integrated planning between the executive and the legislative branches, and because people of common ideology are working towards a beneficial end.

I think we're all really concerned about the issues around tort reform, even though it can be a very dull and dry topic. But I think it's really important and I want to share my thoughts with you about tort reform and how we can continue to be on the offensive on this issue.

Before I launch into my soliloquy, though, I would like my wife Anne, the First Lady of Arizona, to stand and take a bow because she's gone down this road with me for a few years.

But wouldn't you know on the airplane here, as we were landing in Chicago, the person I was seated next to, asked me, "Well, what are you doing?" He saw me reviewing this speech. He says, "Where

are you going?" I said, "Well, I'm going to give a speech on tort reform." And he said, "Well, why are you doing that?" I said, "Well, I'm the Governor of Arizona and I was asked by ALEC to go give this speech." And he said, "You know, I don't like lawyers." And I said, "Oh, really, yes." He said, "Well, if you see a lawyer and a politician in a pool and both are drowning, but you can only save one, what would you do?" And I looked at him and I said, "I don't think I want to answer that question." "That's right," he said. "What you do is — you go shopping."

So as you can tell, lawyers are not in favor today, though I know many fine lawyers. So as I give you my few lawyer jokes here I want you to take them gracefully. No insult is meant. But I looked high and low to find something that we all have in common, and finally I ran across a headline in this paper regarding this issue that said, quote, "High-priced bull," unquote. And what could be more appropriate in a discussion of tort reform. It turns out that this story had absolutely nothing to do, really, with politics, and everything to do with tort reform. The bull in this case referred to the real-live thing with the ring in his nose, fire-breathing monster on four legs, and it was a prize bull that this fellow owned and a farmhand who did not speak English was charged with taking care of this bull.

Unfortunately, a pesticide was used. The pesticide warning label was in English. Ultimately, the bull came into contact with the pesticide and was poisoned and died. Well, as luck would have it, the bull was not just any bull, it was a prize bull. And since it was a prize bull its owner felt compelled to sue for the great loss that he suffered. And, of course, he couldn't sue himself and he couldn't sue his farmhand, because there would be no profit in that. So he searched for the deepest pocket and he sued the pesticide manufacturer.

Now, the owner's lawyer proceeded under the theory that it was reasonably foreseeable that a person using the product could not read the English warning label. Sound like bull to you? Maybe so. But the owner walked away from court with an eight-and-a-half million dollar judgment. And that's what high-priced bull is all about.

I don't know if that's justice or not. I'm reminded of the story of a law partner who went away on vacation and left his associate to complete the case and when the associate won the case for his client he wired his partner who was on vacation in the Caribbean and said, quote, "Justice has just triumphed." And the vacationing lawyer then wired back to his associate and said, "Appeal the case."

Well, on a more serious note, I'm here to talk about the gradual transition of our civil justice system from one that relied on contracts to one that is now ruled by tort law. But the misfortune, I believe, of that transition is the gradual deterioration of individual responsibility and the logical erosion of individual liberty.

You see, in contract law it's a well-accepted principle that each party enters into an obligation and then fulfills that obligation. Each person knows his duties and privileges from the outset. If someone fails in his obligations he is made to pay damages to the other party in a sum and manner that would be as good as if the obligation had been met. No more, no less.

Now, tort law, on the other hand, is a system where obligations are intentionally obscured. Nothing is known up-front, and compensation has little to do with injury. At its best, tort law is a fault-based system subject to severe manipulation.

In Arizona, we're very fortunate to have a legislative majority that saw the injustice of our tort system and was willing to undertake the arduous task of reforming it. It hasn't been easy. It's a battle that's been going on for years. In this room is Senate President John Greene, who led an aggressive effort to enact the strongest tort reform possible in Arizona history within our severe constitutional limits.

And I'll tell you, the battle was so tough that you noticed he's carrying a cane around and he has a little limp in his right knee.

One of our nation's most articulate spokesmen on the problems brought about the decline of our civil justice system is Peter Huber, and I'm sure many of you have read his book. He has quite aptly labeled the costs imposed by litigation, the "litigation epidemic," as a hidden tax. Well, I don't think it's so hidden, but it certainly is a tax. It's a cost that's built into every product and every activity. It's a cost that's resulted from a civil justice system that has gone wild at the hands of a few of its less scrupulous practitioners. This hidden tax takes, frankly, all the fun out of running a business in modern-day America. It's sucks the very wind and life out of every instinct to compete, out of every incentive to work harder or to do better. In short, it has the gloomy effect of crippling the marketplace.

Now, we have read in the newspaper about larger and more frequent jury verdicts. Americans no longer bat an eye when they see multi-million dollar judgments. And it is not surprising there are just too many of them, day after day that we read about. According to Mr. Huber, the first jury verdict exceeding a million dollars was delivered in 1962. In 1975, there were fewer than twenty. But in 1991, American courtrooms saw 750 verdicts of a million dollars or more. In addition to their frequency, the dollar amounts of punitive awards have increased sharply in recent years.

Now, a study of punitive damage awards against businesses in California, Florida, Illinois, New York, and Texas concluded—and I'm using his words... "that the awards were 89 times greater in inflation-adjusted dollars from 1988 to 1991 than they were twenty years earlier in the period 1968 to 1971." But the size and frequency of the awarded damages seem almost logical in comparison to the way liability is assessed.

In an essay, Mark Pulliam of the Golden Eagle Club provides these examples. A jury ordered a restaurant to pay more than \$3 million to a patron who was stung by a bee. A New York man who deliberately leapt in front of a subway train sued the city and recovered \$650,000.00 because the train didn't stop on time. A Philadelphia jury awarded a woman almost a million dollars because she claimed a CAT scan had interfered with her psychic powers. But as Mr. Pulliam recognizes, these are not isolated phenomena. Consider these statistics. The Rand Institute for Civil Justice estimates that operating costs alone for our civil justice system are greater than \$2 billion a year. The liability component of litigation, all by itself, amounts to \$80 billion per year. That's about equal to the total profits from the top 200 U.S. corporations. Up to \$300 billion is spent each year in order to avoid liability. The overall cost of the American tort system equals approximately 2.3 percent of our gross domestic product... four decades ago it was .6 percent. Now, obviously, something has gone wrong.

To make matters worse, litigation is an inefficient way to compensate for legitimate injury. For every dollar spent on legal action, less than 50 cents goes to the prevailing plaintiffs. We live in a country where one out of every ten adults was involved in a lawsuit in 1989. One out of ten. The sorry result, as Mr. Pulliam notes, is that surging liability insurance costs, huge legal bills, large settlements, and unpredictable jury verdicts impose a heavy tort tax on every business in the country. And this leads to costlier goods and services, fewer jobs, and less investment.

The United States is having a tough time now competing in the global marketplace because of the restrictions placed on research and development. Our foreign competitors, though, often have a cost of product liability insurance that's up to 50 times lower than the United States. But the reality is that plaintiffs' lawyers aren't the only ones in the game. After all, for every plaintiff's attorney there's at least one plaintiff and six jurors. People just like you and me. And since these people are filing about a quarter of a million lawsuits each year, and regularly rendering seven-digit jury verdicts, maybe a little self-evaluation is in order.

Could it be, as Mr. Pulliam suggests, that part of the blame must be assigned to a deterioration of our shared cultural values of individual responsibility and self-determination? Could it be that the explosion of our tort system, like the expansion of our taxing structure, has coincided with a phenomenon in our society of failure to accept individual responsibility? In another query that I share, Mr. Pulliam ponders whether qualities such as resilience, toughness, forbearance, and the ability to withstand adversity, have been subordinated in favor of a get-rich-quick mentality fueled by greed, envy, and self-interest?

The emerging attitudes seen by Mr. Pulliam conclude that life should be free of risk, that no misfortune occurs in the absence of blame, and that no injury should go without compensation. In the absence of either a social ethos or a transcendent ethic to confront adversity, litigation has become both a proxy and a shortcut to innocence, meaning and justification. Simply put, "If something has gone wrong, someone must be at fault and it sure isn't me."

Well, now, what has this done to the soul of America? People have unquestionably become more contentious, litigious, sensitive and intolerant, and have become less cooperative, harmonious and forgiving. That's the end result. That's where we're headed. If this is the case, I think we ought to revolt. That's a strong word. But it's a dangerous road we're going down. We must restore some justice to our civil system. And in Arizona we've begun to do exactly that with the tremendous leadership being asserted in our House and Senate, and backed by the executive branch.

We passed the 1993 Tort Reform Bill and it has eleven key provisions. We've granted immunity to volunteers. We have significantly reduced the liability of landowners who allow their property to be used for educational and recreational purposes. We've established a system of comparative negligence, and now have a twelve-year statute of repose. We have reduced the barriers to communication between defendant and plaintiff's doctors. We have made it tougher to successfully sue providers of emergency medical aid. Insurance companies can now place liens against proceeds collected from third parties. Criminals who were allegedly injured during the commission of a crime can no longer bring suit.

We've expanded our collateral source rule to apply to all personal injury actions, and we now allow for the periodic payments of future damages. And we now allow people to choose between insurance policies that provide for multiple recovery and less expensive ones that do not. Finally, because the state, as much as any entity, was prey to unreasonable lawsuits and bankrupting damages, we addressed public sector liability. That's a tough one, but it had to be done. Arizona was second only to New York in paid tort claims. Millions of taxpayer dollars were spent to pay for injuries occurring on the state's highway system. Millions more were spent to defend lawsuits brought by drunk drivers or the users of illegal drugs.

The "suits against the state," a provision of Senate Bill 1055 ended this madness by granting additional qualified immunity to the state. And as I remind my friends all around our state who've talked about this issue, they're the ones who pay in the end. The state doesn't make money. The state takes money out of your pocket, the citizen's pocket. And when these lawsuits go against the state, it's going to go against your pocketbook. And you've got to get down in the trenches. You've got to talk that way to people. You've got to make people understand that when these lawsuits are successful against the state, it's going to do great damage to the economy, potentially to them, and it could cause tax increases depending on the cumulative size of all these judgments. This bill also established a one-year statute of limitations for filing against the state.

Well, all of this is now Arizona law. But our trial attorneys are already mounting a new attack on the progress that we have made. They are now putting together a number of provisions to present to the voters by initiative this coming November. And basically what they've done, is that they have gone out with paid circulation people and bought the signatures to hold up certain provisions of this tort reform

law. So the battle is beginning to be joined. We're expecting a lot of glitzy propaganda from PITMA advocating their views.

I would be very interested to hear suggestions on how to defend against this attack on the state budget from those who come from places like Alabama, Texas, North Dakota and Mississippi. People who, like us, have fought hard to bring some order to the civil system. And I would especially be interested to hear how you dealt with paid petition circulators. This is a practice that I believe undercuts the philosophy of initiatives. I think we need to look at ways to limit the use of this vehicle when it is employed in a manner that is really contrary to the spirit of democracy...the idea of a grassroots political movement.

This might be one way to battle the ever-increasing pressure that we have felt from the plaintiff's bar. Seven years ago, 63 pieces of tort reform legislation became law in 21 states. Four years ago, the numbers dropped to five in five. Those of us who are dedicated to restoring justice to our civil justice system must band together. For those states now contemplating tort reform, I do have a few brief suggestions.

Our legislative session began in late January, but a solid tort reform effort began long before the session. Not much can be done legislatively without good legislators. And as I've said, we're very fortunate in Arizona to have people like John Greene and Tom Patterson and Larry Chesley and Matt Salmon in the Senate, and others like Pat Blake and Bob Burns and Brenda Burns and Lori Daniels and Gary Richardson in the House. And I saw Carol Springer here, who's the head of Senate Appropriations. We have a great team, and they're willing to take the heat, they're willing to stand up in the face of the onslaught that we all know is coming on this tort reform issue. But in order to achieve significant tort reform, the right people must be given the vote. So the first key is to put good people into the legislature. That's the first big step.

And then make tort reform a campaign issue and go on the offensive. Don't be put on the defensive. Carry the standard into battle and have your counter-arguments ready and go right at these people. Force candidates to express their views. Unless he or she is bankrolled by the trial lawyers, they're going to be in favor of improving the civil justice system. This is a battle between the good guys and the bad guys. That's how I view it. Get the help of real people like Bill Jones in Arizona, who's our own quintessential good guy lawyer. Yes, believe it or not, there are many of them out there. Find an attorney who's represented an innocent landowner found liable for trespassers' accidents and forced to sell his property to pay the judgment. Put him on television. Find one who represented a small businessman who had to file for bankruptcy because he was ordered to pay for something that he couldn't control. Find an attorney who's watched a compassionate physician hang up her stethoscope due to the cost of malpractice insurance.

My own mother, who's quite elderly and infirm, is being taken care of by a wonderful lady whose husband worked for forty years building a business in Arizona. He sold it and they ended up in litigation. The group that they sold it to turned around and sued them under the RICO statutes. They've done nothing wrong and they won their lawsuit. These people filed for bankruptcy and this lady's husband died from all the stress and strain, and she was left destitute. After forty years, the equity in the business was wiped out under this system of American justice, and I don't like that. I think that's wrong and I think we need to change it.

If you put the good guys up against the bad guys and force them to debate the points, I believe the good guys will win.

Once the issues are exposed, the motives are easy to discern and the few will no longer have the edge against the many. And I invite any of you who are interested in more detail about our reforms to

talk with Barry Aarons, our legislative liaison, about our strategies as we go on the offensive on this issue. A just civil justice system is necessary in order to maintain important individual rights. We've come a long way in Arizona to send a message to our citizens that the executive and legislative branches of government will not impose unreasonable taxes, and this is part of it. We now must insist that our third and non-elected branch of government does not do so.

You see, in Arizona we had, prior to my coming into office, \$518 million in tax increases in the four years preceding my term. There was a myth spawned by the political opposition that we were suffering from a structural deficit. And I disagreed with that. I didn't like all the tax increases and the growth of government in my state, and that's why I ran for this office. In the 1980s, state spending grew faster in Arizona than any other state in the union. The economy was sagging, citizens were calling out for lower taxes and better government.

Before taking office, I was the president of a small development firm in Phoenix, and I became well acquainted with what it takes to run a good business. And I wanted to introduce some of these private sector concepts into the struggling public sector. And I told voters that I would right-size government, make it more efficient, more responsive and less costly. I came up with an acronym for my program, Project SLIM, which stood for State Long-term Improved Management. In concert with this effort, I would attempt to keep regulation at a minimum to avoid imposing unnecessary expenses. Most importantly, I told voters that I would lower taxes so that individuals could spend more of their income as they wished and businesses could survive and prosper.

My ideas were, as you can imagine, ridiculed by many in the journalistic profession. But I'm pleased to report to you that the people of Arizona were receptive to these ideas. Over the past two-and-a-half years, we've watched while these ideas have become law and now they've become a way of life. We have really changed attitudes, both within government and outside of government. During my first year we held the line on taxes. I took office late in my first term because I had to suffer through a run-off election. I don't recommend that for any of you in this room, by the way. That's one law we did repeal, thank God.

During my second year, taxes were cut by 16 and a half million dollars. I know it doesn't sound like a lot, but believe me, I figured out the best way to avoid a tax increase is to ask for a tax decrease.

This year they were decreased twice that much, and through fiscal year 1998 we have approximately \$400 million in cumulative tax decreases on our books, which is going a long way to offset the damage that was done in the late '80s. But what's more important, this is the first year in memory that we have had a surplus in our budget—a \$65 million surplus for this fiscal year. And we finished our year without having any mid-course corrections in our budget. That's because the legislative branch and the executive branch worked closely together to craft a budget that was good for all of Arizona, not just for Arizona state government.

We have a message for Washington. We lowered taxes and our revenues increased into state government.

Those who don't believe supply-side economics works need to study Arizona, because our economy has turned sharply for the better. We're on the mend, and it's because of proper fiscal management at the state level. My only fear is that what's happening in Washington and at the federal level will undo a lot of the good that we've done at the state level, and I personally find that very frustrating. We're also sending a message to businesses that Arizona is a good place to locate, and that's important. I refer to Jack Kemp as my coach. I like Jack Kemp's policies. And he has one famous line he likes to give in his speeches. He said, "Before you have employees, you have to have employers." And if

you're going to have employers, you have to have people willing to come in and invest their capital, and you've got to condition the environment for that type of activity." That's just exactly what we're doing in Arizona. It doesn't take a rocket scientist to figure it out, and we're seeing the results of that now as our state turns an economic corner.

Well, the message is being picked up. From the fourth quarter of 1991 to the fourth quarter of 1992, Arizona tied with Florida and Idaho for first place in percent of revenue growth. And last year, we had over 50 new companies which moved to Arizona, bringing 13,000 new jobs with them. And though Pete Wilson is my friend, I did take a lot of those jobs from California. I apologize.

But we've made Arizona a good place to set up shop. We have a solid labor force, a hospitable culture, and a statutory tax structure that promotes commerce. With all of this, it's easy to see why tort reform was so necessary, because so much harm can be done in this area. It can just devastate your economy. It can devastate people's attitudes towards investment and taking risk. And in America, we're famous for taking risks, for taking a chance. We're an entrepreneurial culture. We had to let prospective Arizona businesses know that there would be no hidden taxes in our state. We had to let them know that we are no longer enslaved by the threat of civil litigation. We had to let them know that they can compete, they can participate in the marketplace, and that they can keep more of the profits that they earn.

In the end, though, our real message is philosophical. We are a state that welcomes, celebrates, and rewards individual responsibility. We have a new appreciation for the art of the possible. We know for certain that we can have good tort law even under severe constitutional limitations. We can have committed leadership and aggressive help from the private sector, to use the power of government to increase, not diminish, individual liberty, and to promote a common prosperity for all people.

I wish you all the greatest success as you take up similar challenges in your state. God bless you, and thank you. ■

20TH ANNUAL MEETING
AUGUST 1993
TRAVERSE CITY, MICHIGAN



**MAYOR BRET SCHUNDLER
OF JERSEY CITY, N.J.**

Power, and who has it, is the topic of Jersey City Mayor Bret Schundler's remarks. His message is that there is a temptation for every level of government to amass power for itself, which then it rarely relinquishes. He uses school vouchers as an example of an appropriate way to convey power to the people, because he believes that giving vouchers to parents will give them the power to solve problems that government cannot. Schundler gives a new perspective of a political system that has been corrupted by political self-interest and power.

been corrupted by political self-interest and power.

I want to tell you that I'm very honored to speak with you because you represent state legislatures across the nation. And I believe that the state and local levels is not only where governmental power belongs, it is also where it actually exists, if we choose to use it.

Ronald Reagan talked about the New Federalism, and I think he was absolutely on the mark with regard to the way we should devolve power more into local hands. In a place like Jersey City, that kind of a phrase doesn't really mean anything to the people on the street. So what I talked about in the course of my campaign wasn't an ideal like the New Federalism, but I just simply said, "Don't you think that you should have the control to make these decisions over your own life? Don't you think government should really put power in your hands?"

And I have to tell you that we've gotten some notice because Jersey City is not a place where it seems natural for a Republican to win, campaigning on the ideas that I campaigned on. But that is an incorrect political analysis. The most natural place in the entire United States where you can find people who want power to be put in their hands is a place like Jersey City...or, for that matter, the south Bronx. Because where else are you going to find a population more jaded when it comes to politicians promising all the good things that they are going to do for you?

The people in Jersey City don't need to be told that power corrupts and absolute power corrupts absolutely. They know it firsthand. Jersey City has been in many regards the model of the machine city in America. I can't tell you how many people from Texas and California say "Yes, when I was in college we read about Poly Sci...we read about the Hague machine in Jersey City." And it's the truth. The Hague machine was the epitome of machine politics in America, and I think it has a lot to do with the despair that afflicts places like Jersey City and many of our Eastern rust belt cities today.

The more you devolve power and put it into the hands of people themselves, I'm convinced, the better.

Last Saturday I had a chance to appear on Jesse Jackson's "Both Sides Now" program. I was talking with Henry Cisneros, the new HUD Secretary, about President Clinton's proposals, and Secretary Cisneros got all excited about all the exciting programs coming out of Washington to empower our local neighborhoods.

I said, "Henry, this is just so ridiculous. You're telling me that Robert Reich is going to do this, and this Secretary is going to do that, and they're going to do that to empower our neighborhoods. If you want to empower neighborhoods, stop doing all this stuff. Just give a big tax credit for state taxes paid."

I said, "Some of our New Jersey dollars can stay in New Jersey. And we will take care of some of our problems ourselves."

The temptation is so great for every level of government to accrue power to itself. The temptation for the President is, I'm sure, tremendous. And it is also a great temptation for our state legislators to accrue power to themselves that does not belong with them, but belongs with the people themselves.

The issue of where power is located is obviously the central issue when it comes to talking about school vouchers. School vouchers are not an educational reform; they are a revolutionary change in where power is located. What we're talking about here is putting power directly in people's hands. We're talking fundamentally about educational enfranchisement, just like the vote represents political enfranchisement. To allow people to search out the best for themselves, because we do not believe in benevolent dictators.

We know what the keys are to running an effective school. I picked up in 1991 the ALEC report on "Breaking the Chain," which had a nice speech copied from Bill Bennett. It was talking about effective schools research that took place in the 1970s and 1980s and it's absolutely great research. And one of the points he made was that we have tremendously effective schools all over this country. You don't have to build new models; they exist. We know what works.

But the issue is that there is no political impetus to implement what works, and there is a tremendous political impetus against it.

Clearly, the NEA is the most powerful political organization in the United States. If you go to every state capital in this country I would venture to guess that just as in New Jersey, you'll find the most expensive, most impressive office building to be the one in which your state education association is located. And when you read the article from "Forbes" magazine, it's not surprising why, given the financial resources that they command.

But I want to make this point, too. It is not wrong for the NEA or their state chapters to ask for the moon. It is their job. It is the fundamental job of a labor union to try to get as much money as they possibly can for as little work. That is their job. We shouldn't condemn them. They're not up for reelection, and when we're campaigning out there in the hustings, no one has a chance to vote against them; they're not the enemy. They're doing their job.

The people who are elected by the people to stand up for the people and balance that interest group are legislators themselves. That is where the power is, and that is where it belongs according to the Constitution. And that's where we have to be willing to use it for the sake of our country.

You know, it is also unnatural to assume that a legislator who has any political self-interest is going to stand up to an organization as powerful as the NEA. So it is not wrong for the NEA to push for the moon and it is unnatural to expect a legislator not to go along.

That is an example of a system that is irreparably a failure. When you set up a system where morality is unnatural, you have a problem. And the only way to make the system work is to put power in the parents' hands because parents don't stand for elections. They don't have to worry about money being poured into the coffers of their opponent and people ringing doorbells against them.

That is the only way to get out of this problem we face. Reform will never work. We look at the situation in New Jersey where Governor Kean had the courage to put through a state report card on each of our districts so there'd be some small measure of accountability as to how well the district was doing. Right away, Governor Florio comes in and that doesn't exist any longer. So we've seen a lot of

political pain as we fought to have that report card instituted, but no gain because it was quickly overturned. And if we don't change the way this system works, it will always be that way.

If we do give power to parents, they will never, ever give that power up. I have to tell you, I truly don't believe that most legislatures will give that power up themselves. The way this is going to happen is that legislators, like yourselves, who know the answer and have the courage, are going to mobilize the people and the people are going to take it.

I don't think in history we've ever seen examples of people giving up power. What we have seen in the history of revolution is that people take power. And we can be instrumental in helping to mobilize them, to make them see what their interests are so that they demand that power.

And that is the political fight that's worth fighting. Can you imagine the American Revolution simply to get rid of the Stamp Act, and all that blood shed simply to repeal one oppressive piece of legislation, but leaving King George in power?

Well, that's what we do when we fight to get a state report card. Or, for instance, in New York City when we fight to get a better superintendent's contract. We spill political blood for nothing. The fight that is worth fighting for is the one that fundamentally changes power relations in a way that is permanent. And if you give power to the people to let them seek out the best education possible, they will never let it be taken away again.

Can you imagine going into a place like Jersey City where we have a poor population...\$10,000 per capita average income...where only 40 percent of our people graduate from public high school...where we do have a significant drug and a welfare problem. Can you imagine going into that city and saying, "You people just don't have it together, so we're going to take the vote away from you because you're not smart enough, you're not self-disciplined enough, you're not rich enough, and you're not white enough?" There is no way you can ever take the vote away from the people of Jersey City. They will throw you out of office before they'll ever let you take it away.

And if you give them educational enfranchisement, just as we have in America given political enfranchisement, they will never allow it to be taken away.

So through this reform...fighting this one good fight...political leaders will mobilize their constituencies so that parents can fight and beat the NEA in the election to come. Parents will win again, because you will have given the people something that they will fight for. Something to hold on to. And they will stand up for a legislator who has given that to them. And that legislator now will have been able to do what he believes in, or she believes in...what is morally right, and they will win elections. That's the way the system should work. When you do what is right, you win. Not that you lose, as is the case today. That when you stand up to fight for parents, you win.

Now, I'm convinced that in the future, when this is effected, the NEA will spend most of their time negotiating with school management, and they'll be similar to a labor organization in the private sector. They have a role to play...to look out for the interests of their membership. But in a competitive environment they have to keep an eye on performance because, otherwise, they will be out of business and their members will suffer.

That is the balance that is missing in the system today. In a competitive environment, both management and labor will still have conflicts, but they will both have to keep an eye on the competitive performance result. And that's the way it should be. In fact, I'm convinced that in the future the NEA will become the strongest force in America for regulatory relief of our public schools. They will be the found saying, "Get off of our back" ■



THE HONORABLE JON KYL
UNITED STATES HOUSE OF REPRESENTATIVES

As the health care issue was beginning to come front and center, Congressman Jon Kyl (R-AZ) framed the good and bad aspects of the current health care system. The message of Kyl's address was that we should strive to preserve the good -- the innovation, the technology, and the training of medical professionals, and seek to reform the bad -- high costs, the uninsured, and lack of portable coverage. Kyl gave a preview of the plans that would eventually be proposed in the 103rd Congress, and outlined the pros and cons of the single-payer plan, managed competition and Medical Savings Accounts.

It is a special pleasure for me to be here this morning and to be in the presence also of my colleague, Henry Hyde. As all of you know, Henry Hyde is one of the most influential members of the United States Congress and it's especially fitting that he could be with you here this morning.

My role is to briefly survey for you the various health care reform options that have been discussed in the Congress, with an eye toward identifying those proposals that are most likely to receive consideration when we return from the August recess after Labor Day. But I must confess that whenever a politician starts talking about reform, I recall a response of a literary character during the French Revolution, who said, "Reform, sir? Don't talk of reform. Things are bad enough already."

And with respect to health care, I think we might keep that in mind. Just as the physician's first admonition in treating a patient is to do no harm, a legislator's first obligation when considering reform is to survey the good and the bad, and to identify a course of action that hopefully will preserve the good while resolving the bad.

And, therefore, I think we should begin this morning with a brief survey of where we are in our health care in the United States. Clearly, with respect to the good, we can be proud. In terms of technology, the quality and technology of our nation's health care system is indeed the envy of the world. We have the most advanced medical facilities and the best access to high tech medical care anywhere. Our health care providers are the best trained. Nations from around the world send their best and their brightest to train in our schools. We have a private sector specializing in pharmaceutical and biotechnology research, which has produced equipment and drugs that have saved countless lives and ended the suffering of millions of people all over the world. And with respect to choice, we have the widest access and choice anywhere, more than in any other health system.

So whatever we do, we should not discourage the research and the training and the utilization of the most advanced technology, nor jeopardize the choice that most Americans enjoy.

Now there is some bad. As you know, national expenditures on health care have risen faster than in any other segment of our economy. Estimates are that the United States will spend some \$900 billion on health care in 1993, representing about 14.6 percent of our gross domestic product. According to the Congressional Budget Office, the federal government paid for about 45 percent of the total dollars spent for health care in 1992, so there's a tremendous pressure on the federal government to begin addressing this problem.

We know we have too many uninsured in this country, and there's too much of a reliance upon insurance from employers. There is a problem with portability, carrying insurance when you have to go to another job.

And getting back to the issue of cost for a moment, we have some specific cost drivers in this country, some of which are unique to the United States and some of which are not. Some of which are susceptible to legislative solution, some which are not. Our medical liability system I think is broken. Lewin VHI, a Washington based econometrics firm, estimates over \$35 billion can be attributed to the practice of defensive medicine, and over \$5 billion of excess malpractice premiums loading down our system.

We have little incentive for consumers and providers to be cost conscious, and I'm going to talk about that a little bit later on when we talk about the market based options for reform. There is almost free access in many cases to the highest tech services where the patient doesn't feel the pain of paying the cost. We have administrative waste. Estimates show in some cases as much as 25 percent of health care costs are spent on administration.

And demographics are a problem. In this country, two-thirds of the men and women...in fact, let me repeat this because I think this is just an astounding statistic...two-thirds of all of the men and women who have lived past the age of 65 in the entire history of the world, are alive today. And health care costs for older Americans average about four times that of people under 65 years of age. So there's a demographic cost driver here that's hard to deal with from a legislative point of view.

And finally, here in the United States, we have life style choices that present special problems. If you've seen the pictures of the crack babies or visited a trauma center on a Saturday night, you know there are some unique circumstances that cause our costs to rise beyond those in some other countries. So we do have our problems and, again, the challenge will be to preserve the good while dealing with the bad.

Before I discuss the five or six key options that have been presented in the Congress so far, let me also suggest two considerations to have in mind as we evaluate these options. First of all, there is, to some extent, a political disconnect. Consumers want more than anything else security of coverage. They want choice preserved, costs reduced, and quality sustained, while policy makers want to reduce national health care expenditures. Now handled properly, these goals can be quite consistent. Mishandled, American's will face Hobson's choices.

The second consideration is that central to the cost containment, is the question of who will manage utilization. Will it be the government? Will it be a health insurance purchasing cooperative, the employer, or individuals? How one addresses this issue has a lot to do with one's faith in government, or lack thereof, or one's faith in individuals to make the choices that are best for themselves and their families.

By and large, liberals believe that the health care market is too complex for most individuals to make those decisions and, therefore, that these issues are best handled by some level of government. A lot of moderates would like to continue the policy of relying upon employers to make these choices. Conservatives, on the other hand, believe that a well regulated and properly functioning insurance market, with individuals making the decisions produces the best balance between the competing goals.

When September comes and Congress gets back in session, there will be a whole variety of bills introduced. One bill, however, has already been introduced, and I'm going to start with this option. It is the option representing the most liberal point of view in the Congress. It is advanced by represen-

tatives such as Jim McDermott (D-Wash.) and Pete Stark (D-Calif.) and others. There's a bill pending right now for national health insurance which has about 87 cosponsors. I think it represents a liberal point of view in the House of Representatives, of perhaps a block of nearly a hundred liberal members, a block that must be contended with as we move forward. It is a single payor kind of program, similar to that found in Canada or Britain. And in our nation, it would be similar to enrolling all Americans in Medicaid.

I think most Americans are familiar with the kinds of problems that would accompany such a program. A rapid decline in the quality of care as a result of rationing and restricted access to high technology medical services. It represents the ultimate in managing utilization; basically, the government would ration the care.

And I think that you can say some good things about this. To support this idea, you only have to believe these four things: that taxes don't have an adverse impact on the economy, that price controls work, that monopolies are efficient, and that the government is a wise, compassionate and efficient distributor of goods and services. If you believe those things, then the single payor idea is for you. Enough of that.

I really don't mean to dismiss it quite so quickly, because the fact is that the President is going to have to deal with this liberal block of votes in trying to sell his program, and you saw what happened when he had to rely on a group of liberals in this last budget debate. We had to make taxes retroactive to pay for their programs and a lot of other things that Henry Hyde could tell you about. So it's no laughing matter to have a big block of liberals out there who are constantly tugging and pulling the Congress to the left.

Well, the second option is the Clinton plan, called managed competition. I think there is something revealing in that the temporary, or proposed title of the bill, is being prepared to embody the concepts of the Hillary Clinton task force. It's called the Health Security Act of 1993. Some of you will remember the Social Security Act of 1933 and see a parallel. And, indeed, it is true that some people believe that President Clinton sees that this issue could be for him what Social Security was for Franklin Roosevelt, and that it represents a good opportunity to make his mark in history. Thus, the Health Security Act.

Pollsters will also tell you that security is one of the dominant concerns of Americans, and, therefore, it's not a bad idea to include that phrase in the title of the bill. So that begins to tell you a little bit of the background of the Clinton plan.

It's been very difficult to get information about this plan because of the secretive nature in which it's been put together. But enough is known of the President's plan so that I'll be able to give you a little bit of detail. Most importantly are the implications for the members of state legislatures around our country. After all, state legislatures are going to be primarily responsible for enforcing this kind of plan, and I don't think you're going to like to have that particular responsibility.

It starts with a national board which has various responsibilities, most important of which initially, is the creation of a core benefits package. And that core benefits package, as it's been discussed in Washington right now, is extremely generous. It is estimated that it would cost between 100 billion and \$130 billion a year for Americans to obtain this core benefits package. That's the basic coverage that would include everything from eye glasses to dental care, to mental health. And a lot of other things which, frankly, a lot of Americans need, but a lot of Americans don't need, and yet would be part of this package. Everyone would be required to have insurance with this package from one of the accountable health plans. The accountable health plans, probably the best analogy would be to a giant HMO, although it doesn't technically have to be an HMO. But they would be giant health organizations that would contract with providers to provide the care called for in the core benefits package.

But you wouldn't buy the insurance directly from the accountable health plan. Rather, health alliances would be created, at least one per state, depending upon the size of the state. In large states there would probably be several. They would probably be appointed by the governors of the state, in any event a somewhat political decision. And they would be the regulators and the brokers for the insurance that would cover every American. They would regulate the industry. They would be the tax collectors from the employers who would largely fund the program. And they would actually buy the coverage from one of the accountable health plans in their area. So these health alliances would be very, very powerful. They would actually pay for the insurance through a combination of new taxes, including a new payroll tax which would perhaps be in the area of eight or nine percent. Now you'll hear this called by a lot of different names, but as we found in the debate over the budget, a contribution is a tax and an investment is spending. And this payment of premium on behalf of the employer and employee is a payroll tax.

In addition to that, those companies which would be administering their own health care plans...companies of over 5,000 employees which choose to do that... wouldn't be off the hook. They'd still have to pay a surcharge to help pay for everyone else. And then there will also be sin taxes on alcohol and tobacco and perhaps some other levies as well, but that's essentially how this would be paid for.

Now how is the cost containment going to come about? Well, initially, it is contemplated that there would be some kind of voluntary limitation on costs. Price controls, caps on fees, limitations on what insurers could charge, which would all be voluntary, but if you are straight from the reservation, it would actually be enforced.

On the longer term, it would be accomplished through what are called global budgets...a basic limitation on how much we would plan to spend for health care in this country. And I'm not talking about government health care. I'm talking about the health care that all of us would receive. Once the board established a national global budget, it would be allocated to each state, essentially according to population, and then each state would have to find a way to enforce the global budget. And that's where you, state legislators, come in.

It probably would start with the health alliance, and each health alliance would be given a percentage of the state's global budget. Let's say that in your state, there would be four health alliances, and that they're all about equal size, so that each one of them would get 25 percent of your state's global budget. It's now up to the health alliance to control the costs within the allocation given to that particular health alliance.

So the next level, of course, is the accountable health plan. The health plan would enforce this probably through some kind of utilization review, and essentially get to the point of rationing because its payments are going to be in the form of capitation payments, possibly adjusted for some kind of risk.

A state has a very significant incentive and disincentive to conform to the global budget. There are a lot of different things that could happen to a state. It is suggested in the draft that I've seen, that one of the disincentives for states which do not comply with its global budget would be to make the state 100 percent responsible for the cost of providing care to the low-income people in the state. In other words, if a state exceeds its mandate, all of the subsidized care would be the state's responsibility; no cost sharing with the federal government. On the other hand, if the state meets its global budget, then, in effect, it would get to pocket the difference. So you can see that states would have a powerful incentive to adopt regulations, and perhaps statutes, that would enable it to meet these limitations. I think that the net result of this is not hard to see. It is a form of rationing care in order to achieve these global budgets and that, to me, is a matter of great concern.

A third option is taking shape in the House of Representatives on the Republican side. It's called the Republican Leaders Task Force option, and it essentially plays off of the Action Now Bill, which was introduced last year. This is an incremental concept...it's not a fundamental reform. It essentially tries to keep the good and reform the bad, as I talked about before, but it does leave largely in place the functioning system that we have, with its emphasis on employer based coverage. It would allow small businesses to join together to purchase coverage for employees.

It would place limits on preexisting condition clauses and premium increases. It would preempt state mandates. It increases the tax deduction for the self-employed from 25 percent to 100 percent. It would permit tax deductible medical savings accounts. It would increase funding for community health centers. It provides asset protection for individuals in need of long-term care and, of course, includes tort reform, product liability and antitrust reform, and some administrative reform. As I said, this approach is more of an incremental, rather than fundamental change, but it is at least seen as a place holder, if not the most doable form of reform.

A fourth option is one which I'm just going to call the Chafee approach, named after Senator Chafee, a Republican senator from Rhode Island who has focused on managed care, but doesn't go as far as the Clinton managed care approach would. It, for example, probably would not have price controls or a mandate on employers, but in other respects, would be quite similar to the Clinton plan. So you see a dichotomy there between different Republican approaches.

The last two versions that I'd like to outline for you I'm going to describe as one, though they're actually somewhat different in their specifics. These are the consumer choice or market options, and they've taken hold primarily among Republicans in the Senate. They have been developed largely by outside groups, such as the Heritage Foundation and the National Center for Policy Analysis. And as I say, they both focus on the question of the market and consumer choice, and are based upon the current income tax structure, based upon the theory that this structure creates perverse incentives for effective and efficient delivery of health care in our country.

The tax code, of course, provides a significant incentive for business to provide health care for all employees, and it also does not tax the employee for the benefit thus provided. But there is not a concomitant benefit for individuals who secure their own health care based upon their own perceived needs. And there is a significant disadvantage for the self-employed—someone who does not obtain insurance through a large employer. The net result is unfairness and a disconnect between the choices that may be best for a family, and what is actually provided. And also a disconnect between what might be an efficient delivery of care and what is available, because it has been provided by the employer.

So both of these approaches build off of that problem with the existing system and, naturally, would address it by changing the tax code. Essentially, they both would provide a different kind of exclusion, credit or deduction for the provision of health care. And, both of them, would provide a credit for individuals, for families, instead of employers. Tax credits could be spent, or a tax credit would be provided, for money to be spent on either the acquisition of insurance or on payment into medical savings accounts, or on out-of-pocket expenses. And it could pertain to either the acquisition of insurance of only a catastrophic, high deductible kind, or a lower deductible, more standard kind of insurance. So whatever is best for your own family you would be encouraged to acquire, and the tax benefits of that would accrue directly to you and to your family.

Now the plans differ somewhat with respect to the specific amount of credit or exclusion. In the Heritage plan, the tax credit would vary, depending upon the amount of health expenses relative to income, so that you would effectively provide a greater credit if you have higher medical expenses, or a greater credit relative to income if your income is lower. This way it is believed that there would not be a difficulty for low-income people with high medical bills to be able to afford them. In both of these

plans, there is a concept of an earned income tax credit, or refundable credit, which would also assist the lower income families in the country.

Under the NCPA plan, there is a fixed credit, rather than a sliding scale. And depending upon the cost, that credit might be set as high as 90 percent of the costs of either acquiring insurance or a Medisave type of account. Under this plan, out-of-pocket expenses could be paid from the medical savings account. The total credit would be in the neighborhood of \$2,250.00 for an individual or \$5,000.00 for a family, 90 percent of that amount. Also under this plan, it could be transferable to the employer so that you still could have employer provided insurance.

The concept behind both of these plans is to provide the widest possible choice, and the incentives for individuals to acquire the coverage that is most suitable for them, and to use only that which is necessary. In effect, this permits them to pocket the difference. This would provide a more efficient delivery system for health care services, thus reducing the overall costs.

Now in at least one of these plans, the new credit...one that does reduce the revenues to the Treasury...would be paid for by gradually eliminating the current tax exclusion for employer sponsored health benefits, as well as other deductions. In both plans, the heads of households would be required to purchase some kind of coverage, in one case a minimum catastrophic kind of coverage. The idea is to protect society from having to take care of those who are improvident with respect to caring for themselves, by at least requiring minimum coverage for catastrophic illnesses.

Reform in the health insurance market, which is the fundamental concept here, would also guarantee portability. Because insurance would now be owned by individuals and families, rather than the employer, one could take it wherever one wants. And, therefore, since you have portability, you are less concerned with the issue of having to remain with one employer to keep your health insurance.

These plans also call for renewability, eliminating experience rating, and other reforms that would make it possible for all Americans, regardless of their medical condition, to acquire coverage. And they both include tort reform, antitrust reform, administrative reform, as the other Republican plan does.

So the concept here is to empower all Americans with the resources to have the same choices in purchasing health care coverage and, at the same time, create an incentive for all Americans to be wise health care consumers.

Now those are the essential choices that have been presented to the bill drafters for work over the summer recess. After Labor Day and I think you'll see iterations of all of these plans introduced.

The point that I would like to make in summing all of this up is that it is not by any means a foregone conclusion that the Clinton managed health care plan is going to be the bill that passes the Congress, and that we're going to have to live or suffer under in days to come. You all can play a very important role in forming public opinion, and in informing the debate, as these issues are aired out. And just as we did with the debate over the budget, we have an obligation to be as specific, as detailed, and as informative to our constituents as we can possibly be. It is in their best interests.

And I think we need to ask these questions. First, does it preserve the good and try to reform the bad? Does it preserve choice, maintain quality and reduce costs? Who does it put at the center of health care decision making? Is it the government, a new bureaucracy, the employer, or is it the individual or the family?

I think because of your experience in dealing with a lot of the issues that are associated with health care reform, you know these issues well and therefore can play a critical role. You've worked on tort

reform, on Medicaid reform, on state mandates, and a lot of other issues that are embodied in some of these concepts. And you're going to have to come up with innovative ways to deal with whatever the federal legislation is. In fact, a lot of the legislators in Washington are looking to various states for some guidance, not always, in my view, the best kind of guidance. Hawaii, for example, has a plan that has achieved credibility among certain members of the Congress. California has had tort reform for a long time. I know the Arizona recently enacted some tort reform. So there are a lot of ideas that have germinated from the states that could become a part of this, or at least could help to inform the debate.

And, finally, you all need to ask the critical and defining questions of your representatives in Congress because, as I said, we represent the same constituents. And it is in their best interests, in these life and death decisions, that we inform this debate and conduct it in a robust fashion.

I've got to conclude with a story. Whenever I think of some Clinton Administration appointee interpreting what the people of this country are saying, especially in these kinds of life and death matters, I think of a story that occurred in the history of Arizona, back at about the turn of the century. We had a group of law enforcers called the Arizona Rangers that were patterned after the Texas Rangers. And on this particular occasion the bank in Wilcox, which is a little town in southeastern Arizona, was robbed and all the gold was taken, and the Arizona Rangers were called in to track the perpetrator down.

And so they went after the individual with gusto and followed his tracks all the way down to Mexico. When they caught up with this fellow, there were two problems. Number one, he didn't have the gold and, number two, he didn't speak any English. Since these rangers didn't speak any Spanish, they had to engage an interpreter. And for a little bribe, or what's called *mordida*, they were able to pay a fellow in the local town to come out to where they were encamped and do the translating.

So the captain of the guards got this fellow over to the interpreter, and said, "I want you to ask Pancho here where he hid the gold." So the fellow turns to Pancho and, in Spanish, he says, "Pancho, where did you hide the gold?" Pancho says, "No se." He says, "I don't know anything about any gold." "What did he say?" "He says he doesn't know anything about any gold." The ranger said, "Look, you know, we're hot and tired and dusty and thirsty and we've been riding all day, and we know he's got it and we want you to find out. Ask him where it is. He's got to tell us where it is." So he says, "Pancho, they've been at this all day. They're hot and tired and dusty and thirsty. They want to know where you hid the gold." Pancho says, "I don't know anything about any gold." "What did he say?" "He says he still doesn't know anything about any gold."

So the captain of the rangers put a big rope with a big noose in it up over a tree, pointed to it and said, "Now you tell Pancho if he doesn't tell us where he hid the gold, we're going to hang him. He's going to die." So the interpreter turns to Pancho and says, "Pancho, they're serious. If you don't tell them where the gold is, they're going to string you up, you're going to die." Pancho looks at the rope and says, "Well, okay," he says, "You know that long adobe wall?" "Si." "And at the end of that long adobe wall, there is a hacienda. Behind the hacienda, there is a well, and the gold is at the bottom of the well." "What did he say?" asked the ranger. Pancho says he's prepared to die.

Now doesn't that fellow remind you of Bill Clinton telling us that the American people are prepared to sacrifice? Anyway, you may want to join those of us who will be presenting an alternative to the Clinton plan. I can assure you that I will be one of the sponsors of the market based approach that I discussed today.

I hope you'll join us in that effort, and I wish you all the very best as you work in your respective states for all of the citizens of this great nation. ■

20TH ANNUAL MEETING
AUGUST 1993
TRAVERSE CITY, MICHIGAN



THE HONORABLE EDWIN MEESE III FORMER U.S. ATTORNEY GENERAL

Former Attorney General Edwin Meese III recounts the course of crime and the philosophy that prevailed in the late 1960s and 1970s. The problem with our crime control strategies, stated Meese, is the attitude that incarceration is not an effective solution and therefore violent offenders do not get punished for their crimes. As average time served went down, crime went up, Meese pointed out. Meese went over two trends that occurred between 1980 and 1990: first, that violent crimes went up compared to property crimes, and secondly, drug use amongst criminals became an increasing problem. Meese gave various recommendations to reform the criminal justice system, focusing on keeping repeat violent offenders off the street as the first priority.

Thank you very much ladies and gentlemen. It's a great privilege to be with you, and believe me, I am happy to be here with you today.

As Representative (Jerry Lee) Alwin (N.M.) mentioned, the Heritage Foundation and ALEC are close partners, and I've certainly enjoyed the opportunity to work with your leaders. Certainly, Sam Brunelli and his staff are an outstanding group, as you know from your own personal experiences, and I was always interested in the active role in leadership of Bill Raggio. I've known Bill for longer than he'd probably want to admit...from the days when he was a District Attorney in Nevada and I was in the District Attorney's office in Alameda County in California. We worked very closely together at that time. So it's a pleasure to be here, especially since I will have the opportunity to discuss with you the issue of violent crime in America. There is no more important challenge facing our nation today.

One of the things that I think we have to recognize is the fact that crime has been, for many years now, the top thing that people worry about when they're asked, "What is the greatest domestic problem?" Periodically it gets eclipsed by the economy when we have high unemployment or when we have economic difficulties, but year in and year out, it's always in the top three or four topics that concern people.

And when we try to get the economy going, or when we try to work on the problems of the inner cities, or try to improve education, inevitably at least one of the trails of solutions leads to doing something about crime. You know from your own experience what's happened, and so I'd like to share a little bit with you from my own experience.

But first, I think it's important to recognize what's happened since World War II in terms of crime. In the 1950s, and from the period just after the war through the fifties, there was a philosophy in our country among almost all criminologists that incarceration was a bad thing. And so almost every idea other than prison was used to take care of convicted criminals.

And so by the sixties, we found in California, when Ronald Reagan became Governor in 1967, that less than ten percent of all felons, the most serious criminals, were going to prison.

Well, over the course of the late sixties and the seventies, he was able to change that by appointing judges in California who had a different view. But throughout the country this was the prevailing sentiment.

And that's why we had during that period, from 1960 roughly, to 1980, we had the largest increase in crime in the history of the country...a 300 percent increase in crime. As the average time served went down dramatically, crime went up.

Most people would say that kind of makes sense. Criminals can count, too. It was interesting that an organization in Texas the National Center for Policy Analysis, did an economist's computation of the cost of crime. They acted on the proposition that crimes are intentional acts and that they're freely committed by people who calculate the cost to them for committing crimes. And that in many cases the criminals, while they may not do it in a mathematical way like economists, nevertheless have a general feeling of what their chances are of getting caught. And if they do get caught, what's going to happen to them.

And so they did some calculations. They multiplied of percentage of criminals that got caught for each offense times the likelihood of conviction, times the amount of months that they would serve, and they came to a very interesting statistic. And that was that the expected time in prison for each murder is something like 2.3 years. For rape, it's 80.5 days. For robbery, it's 27 days. For aggravated assault, just a little over 13 days, and for burglary it's 5.4 days.

Now, obviously those that are caught serve much more time than that. But that's taking the average time that people serve, and then multiplying that by a factor of what their chances are of being caught. Now as I say, I don't think that criminals figure those things out exactly, but they do have a pretty general idea. And for that reason, many of them feel that crime does pay.

The important thing is, as was mentioned earlier in the opening remarks, today we have a situation where criminals are spending actually very little time in prison. We have a revolving door situation where the same people are coming back to prison, spending a little time, then going out to commit more crimes. And then most of them are coming back to prison at one time or another.

It seems to me that there's several things that we need to do, and while I could go into the analysis even more, I think it's perhaps important that we talk about what are the changes that have to be made. Let me just say this, however. We did have a period of time during the last 30 years when crime began to go down, and that was at the beginning of the 1980s. By that time, citizens had had enough of the old lenient philosophy and by the last half of the 1970s, into the early eighties, judges were sentencing more people to prison for serious crimes...particularly violent felonies...and they were sentencing them for longer periods of time. And so from about 1981 through 1985, crime actually went down in the United States...the first time that had happened, since World War II.

But what happened by 1985 was that the prisons were full, overcrowded...and so it was at that point, if you look at the statistics, that people started being let out much earlier and not completing their full sentence.

Indeed, today the facts are that the average sentence for a felony in the United States is four years, but the average time served is about 13 months. And that's just the average for all felonies. That's everything from car theft on one end up to murder on the other end. But the amount of time that people are actually serving is only about a quarter of that, and most of that is because of a lack of prison capacity.

The other thing that I think we have to recognize is that even though in 1990 the crime rate in the United States was lower than it was in 1980, there were two significant differences in 1990 over 1980.

One was the tremendous amount of violence, and while property crimes in general were down or plateauing, violent crimes were considerably greater. Secondly that drugs, particularly crack, was an

increasing problem in the inner city. The drug problem is kind of interesting. Up until 1981 or '82, most of the emphasis, what emphasis there was, on a national scale, was on law enforcement. In 1982, there was a comprehensive national strategy which included prevention, education, treatment and rehabilitation, along with strong law enforcement and strong international action.

And from 1982, that period when this strategy was implemented, up until the present time, we had a 50 percent decrease in drug use in the United States. Most of the decrease in drug use was due to the preventive activities in schools and drug-free workplace programs in business and industry. And so we have approximately half as many people today using drugs as we did at the beginning of the 1980s.

The drug problem, however, is starting to turn up again, particularly in high school and junior high school aged students. The reason is because we have this problem in the United States that when something's no longer getting a lot of attention, people start to forget about it. And so the preventive efforts in schools and businesses are perhaps not as diligent as they have been in the past. We have to be very wary that we don't get another major drug problem in our schools.

However, the thing that has happened is that among those people who commit most of the crimes in the inner cities, both small crimes and major crimes, drug use has actually intensified. Because with half the market lessened, drugs have been relatively available in the inner cities. The price has been cheap because you don't have the demand that you had before. In addition to that, you have had crack introduced, which in my opinion was a cynical economic marketing act by the drug purveyors, who could no longer sell hundred dollar lines of cocaine to relatively affluent people. So now they manufacture cocaine in crystalline form, so they could sell \$5, \$10 and \$20 rocks of cocaine to less affluent people in their communities.

So we have these things facing us today—a continuing problem with crack, an increase of drug use in the inner city, a revolving door situation as far as prisons are concerned, and a tremendous increase in violence.

There were two interesting comments that I noted yesterday in the paper. One was that there's been a 61 percent increase during the 1980s, .61 percent increase, in shootings committed by Americans 15 to 19 years of age. That's junior high and high school aged kids. For example, in our nation's capital, in Washington, D.C., the children and teenagers treated for knife and gunshot wounds in the last seven years has increased 1,740 percent. In some inner cities like Washington, D.C., New York, Los Angeles and other places, we literally have a war going on. What we have is a juvenile army out there, with the latest figures indicating that 270,000 children carry guns to school each day.

Now, 270,000 children—it's hard to put that into any kind of context, but for comparison that's half the projected size of the United States Army by the year 1995. The number of kids going to school carrying weapons today, is half the size of what the Army is going to be in 1995. What do we do about it?

The first thing is we've got to be realistic about sentencing. We have got to change sentencing and recognize that only if we're able to put people in prison for violent crimes, or for repetitive crimes, that we will start to get them off the street. Many people say that we're spending more for prisons than we do for education in our state. That may be true, but let me say this: Prisons are more effective in the job they're set up to do than the educational establishment is with the job it is charged with.

We know that while people are in prison, they're not committing crimes against citizens on the street and in their homes. And I can't say that education is equally effective in teaching people to read and write under some of the conditions in some states today.

Now, obviously we need to support both. I think one of the mistakes we often make is that people will say, well, we've got to do this instead of that, or we can't put money into prisons...because we have to give it to education. We need to do both. And I know probably all of you face these tremendous dilemmas at home in terms of trying to squeeze all the requirements into the revenues that are available. But I think it is important.

The other thing that we need to do is decide who belongs in prison, as was stated earlier by Representative Alvin. Earlier he mentioned that some people shouldn't be there. How do you know when a person belongs in prison?

Well, it's tough. It's not always possible to tell on their first time through. But you sure know when they've been to prison and gotten out and committed a new felony, and come back a second time and gotten out and committed a third felony. About the third or fourth time around, they have self-selected themselves as a candidate for a long time in prison. And I think when that happens, we ought to say this person is going to go to prison for, if not the rest of their life, at least until they get to that period where statistically we know they kind of burn out as far as crime is concerned. Maybe they can't jump the fences anymore, running ahead of the police or whatever it is, but we know statistically that by the time a person gets to about 50 years of age, they're not as likely to commit crimes anymore. I hope it isn't true that in prison they learn to read and write, so that the robber becomes a forger when he gets out about that age. But in any event we do know that if a person after the third or fourth time around is kept in prison, we know that that individual who has the capability of committing anywhere from two dozen to 150 crimes per year is going to be out of reach where he or she can no longer prey on society.

The second thing we've got to do is we've got to have society keep its promises. We have to keep our promises to the citizens of our country and also to the criminals.

One of the things we do when a person is put on probation is that the judge very sternly lectures him or her and says, "I'm putting you on three years' probation. I'm suspending two years in prison. Now if you get caught committing a crime or violating your probation during this three-year period, you're going to go to prison." Well, actually the judge knows, and the criminal knows, that that's probably not true. When that individual does commit a new crime, a new robbery, a new burglary, they're going to come back maybe in front of the same judge, or in front of another judge who sees the record, and what that judge is going to do. If he sentences him to prison the second time at all, he's going to make it concurrent with the sentence that was suspended for the first crime. In effect, the person on probation gets a free crime.

We have got to start living up to our promises, and when an individual violates their probation, they go to jail or prison for the length of the term of the first crime, and on top of that serve whatever the sentence is for the second crime, so that we don't give away crimes as a condition of probation.

Thirdly, we have to recognize that what I've been talking about—being realistic in keeping promises—has serious implications for the criminal justice system, particularly corrections. And it's important that we look at the whole criminal justice system.

Yesterday President Clinton announced federal funding to support putting up to a hundred thousand new police officers on the street. I think perhaps there's a good deal that can be done along that line. Actually, the money he talked about will barely support 60,000 officers on the street, but at least it's a start, and it's going to take time to work through this. And there were a lot of other proposals, too many of them which are good.

But the thing that was forgotten is you can't just look at that stage of the criminal justice system. We have today, in cities and counties on the streets of our nation, just under 500,000 police officers. Now if we add, let's say, somewhere between 60 and a hundred thousand new officers, we're making a dramatic increase in the number of officers on the street. Particularly if these are added to the street patrol forces, because a good third, at least, of those other officers are working on specialized details or administrative duties. Now, unless we have the courts, the judges, and ultimately the correctional facilities, to accommodate the arrests made by those officers, they really will not be adding to our ability to stop crime and to be a credible deterrent to the criminal.

In a bill that was introduced last week, by Senator Dole and several other members of the Senate, is a provision that does recognize the flow-through of the criminal when you add new police officers. This bill not only provides for new police officers, but also provides for matching grants to states for prison construction, as well as the building of some regional prisons which can be used for both federal and state prisoners. Now I think this is a much more realistic approach to solving these problems, because the bill that looks at the whole system. We also have to recognize that we have to look at more cost effective ways to build additional prisons as they are necessary, so that we can accommodate people for longer periods of time. I don't think we have to go on building prisons forever. You know, there's some people in the ACLU and elsewhere who say if you keep building prisons at the rate that we did during the 1980s by the year 2050 every other person in the United States will be in prison. Well, let's be realistic. I don't think any of us believes that's true. I think there will be a point at which we don't have to build any more prisons because we'll have the people who need to be in prison there.

We have, at the present time, a little over 800,000 people out of a population of 252 million who are in prison. Of the three million people total, or less than one and a half percent of the population, who are under correctional custody, only a quarter of those people, about 26 percent, are actually in prison; the rest are on parole or on probation. So it seems to me that adding additional prison capacity for a short period of time, and making sure the people who belong there stay there, is going to be a very good investment in the long run. However, it will not be the horrendous continuation of the building boom of prisons during the eighties, which was in large part because no prisons were built between 1950 and the late 1970s, due to the move away from incarceration.

There are other things we need to do, and I'll just mention them very quickly. We need drug testing at all stages of the criminal justice process, for bail, for probation, while in prison, while in jail, while on parole, because we know that people commit four to six times as many crimes when they're using drugs compared to when they're not. We need to put the heat on the federal government to do more on the illegal alien problem. I know the states in the Southwest particularly are aware of that and that's a whole topic in itself. We need to take another look at how our prisons are managed, and whether they are being effectively managed and whether they are places that deter criminals. And this means perhaps looking at whether the discipline that is necessary for these people to comport their lives within the law is being exercised while they're in prison.

And finally, I think citizens need to be educated to the fact that today we're only spending three percent of our total tax dollars on the justice system, including the police, courts, prisons, and the civil justice system as well. If people agree with us that protecting the public from those who would prey on them is a vital part of defense, then just as we've been willing to make sacrifices for our external defense, we need to make a serious investment in our defense at home. At a time when we are able to reduce spending on the military because we've been successful at fighting and winning the cold war, shouldn't we consider using part, or all of these savings, for fighting crime at home? Just going from three percent to four percent of our total tax dollars would give us tremendous resources to build prisons, add police officers and enough courts and judges so that once again, society would be able to tell the criminal that when you commit an offense against our people, you're going to pay the cost. And the cost will be considerably greater than it is at the present time. ■



WILLIAM P. BARR
FORMER U.S. ATTORNEY GENERAL

As the Attorney General of the U.S. under President Bush, Bill Barr acquired an almost unique perspective of law enforcement and the criminal justice system. Barr suggests that the federal justice system be used as a model for reform in the states. Barr refutes many of the popular arguments against toughening prison sentences and aggressively targeting repeat offenders. Barr also states his belief that excessive gun control is a diversion from real crime prevention. Barr makes the case that the lenient policies toward punishing violent offenders that we have followed over the past thirty years are the cause of the "revolving door" system we now see today.

Thank you very much. It's a distinct honor for me to be here with ALEC today and also to share the podium with my new governor in Virginia, George Allen, who's shown what real leadership and courage can do. Now, I want to talk to you today about crime. The public is increasingly concerned about crime, and it should come as no surprise that polls are now showing it even surpassing unemployment as an issue. And George Allen's victory shows the political potency of this issue and that the people's concern is fully justified.

As we all know, violent crime in our society is at intolerable levels. Most of the increases occurred in the '60s and '70s during the era of permissiveness. After Ronald Reagan exercised some leadership and tried to bring strength back to the law enforcement system we did see a suppression of the crime rate in the 1980s, but it's been going up again. I think it's driven, at least it started in '86-87, largely due to the crack epidemic. But as we all know, a big part of it today is the juvenilization of crime, with more and more young people getting into a life violent crime. And what's the ultimate root cause of that? Well, a lot of the policies we followed in the '60s and '70s are now coming home to roost, policies that have broken up families, policies that encouraged illegitimacy, policies that gave public schools and other public agencies a moral lobotomy so that you couldn't instill values or exercise moral authority through schools or through public agencies. These are the chickens that are now coming home to roost. This is why we're seeing juvenile crime and gangs.

But another reason why I think we're seeing violent crime increase, spread and become more wanton and vicious is because we are relapsing to the revolving door system of justice that we saw in the '60s and '70s. The state systems are simply being overwhelmed by the volume of crime. Now, can any thing be done about it? What can we do about it?

There are still those in our society, and this is one of the big cleavages in our society today and in this crime debate, who say we have to deal primarily with the root causes. And you and I have heard this all the time — we shouldn't be spending more money on law enforcement, it doesn't do any good to put people in prison and so forth. We should build more schools, we should spend more on education, we should spend more on health care, attack the root causes of crime. I think these people are sadly mistaken.

First of all, we've been following a "root causes" strategy in this country for thirty years. That's what we've been doing. We've been pouring ever-increasing amounts of our resources into addressing

these problems, in the form of anti-poverty programs and means-tested programs. We now spend over \$290 billion a year, and that's just on the means-tested program. That's \$3,000.00 a year for every taxpayer. And the notion that if we just spend a few billion dollars more here or there on more education or health care, or housing, that somehow we're going to have a breakthrough, I think, is fanciful.

But, more importantly, even if we knew how to deal with root causes, even if we knew what kinds of social programs would help, this is a long-term solution. This is a fifteen or twenty-year solution. It won't bear fruit before then, and people deserve protection today. I was at a conference just last week at Notre Dame and, again, there were the people up on the podium saying, "Oh, getting tough on crime, just putting people in prison, putting offenders in prison, doesn't work. We have to deal with the root causes."

When I was Attorney General every place I went there were people crying out for law enforcement. I remember we went on a raid in Fort Worth, Texas, to a housing project that had been terrorized for weeks by a gang. And this woman, a 70-year-old woman, came downstairs and she kissed my hand and she was saying, "Please don't let the police leave, please don't let the police leave." She'd lived on the floor, lying on the floor for two days because of gunshots around the complex. What can law enforcement say to her? "Well, we're going to spend more money on education and housing and in twenty years this will be a safer neighborhood?" No, she deserves protection today.

Finally, violence has reached a level in our society where I think it's strangling any of our efforts to rehabilitate or restore society, to rehabilitate neighborhoods, to provide opportunity. What good is it to build public housing if it's going to be used as stash housing? And what good is it to build a model school and spend so much more on education if the school is going to be run by gangs? The foundation of economic growth and of opportunity has to be peace and security.

While I think there are many things we can do on many different fronts to address the problem of violence, there's absolutely one indispensable thing, one sine qua non that we have to devote our attention to, and that's to restore our criminal justice system and once again make it effective at punishing, deterring and incapacitating violent offenders. Our strategy has to be centered on one fundamental truth, which is that most of the predatory violence we see in society is committed by a relatively small group of repeat violent offenders, and everybody in this country knows it. I don't have to go into many statistics to prove that point. When people pick up the newspaper and they see the current "horror of the day" almost invariably that violence has been perpetrated by somebody with a long criminal history. Polly Klaas' case is not the exception, it's the rule. The tourist in Miami is not the exception, it's the rule. The murderer of Michael Jordan's father is not the exception, it's the rule. Every year 6,500 Americans lose their lives, are murdered, are gunned down, by people who are on bail, probation, or parole at the time of the murder.

The key problem we face is the revolving door. The fact is we're not incapacitating these offenders long enough. Polly Klaas would be alive today if her abductor had served out an appropriate prison sentence — an abductor with a twelve-page rap sheet. So the single most effective step we can take is to slow this revolving door. And the foundation of all our other efforts has to be to target and incapacitate these repeat offenders. And I think this requires three things. It requires reform on the state level. You all know the game that's played in Washington, D.C., with crime bills and all the cynicism that goes into it. There's very little that can be done on the federal level, substantively, to deal with violent crime. It has to be done at the state level, state-by-state, and it's going to require first and foremost changing the system — truth in sentencing, pretrial detention for people with violent criminal histories, reforming the juvenile justice system. These reforms can be done and George Allen is a good example of how it can be done with leadership, because the people are hungry for it.

I remember this Dallas police woman. She joined the police force at 40 years old and she's now a grandmother but she's still an active cop on the beat in Dallas. And she came up to me at the end of a speech when I was still Attorney General and she said, "Oh, please keep on doing these programs, especially your Trigger-Lock program," Which is a program where we can throw these people in prison for a long time. She said, "We caught this guy, he had 13 illegal weapons in his trunk, he had more than three prior felonies, we were going to throw the book at him and put him away for 25 or 30 years. He broke down and cried. He cried. And because of his cooperation we've solved thirteen murders and put three drug organizations out of business." Well, there's only one criminal justice system that makes criminals break down and cry in this country, and that's the federal justice system. And what we need are 51 criminal justice systems that make criminals cry in this country. Then we'll have an impact on violent crime.

The second thing we need to do is to devote appropriate resources to law enforcement. Yes, more police. Yes, more prosecutors. Yes, more drug treatment. But also more prison space where necessary, to keep those violent offenders off the street. Newt Gingrich and I have been talking about an idea which deserves some study, and I think he's written an op-ed piece on it. And that idea is, as long as the crime rates are as high as they are today we have to get back to priorities. Remember, the first duty of government is to protect its citizens. We should relieve states of substantial portions of these federal mandates, whether they're funded or unfunded, and allow states to shift resources to dealing with violent crime before any of these mandates kick in.

The third thing we have to do is aggressively target offenders. We have the Trigger Lock program I mentioned, where we took these violent offenders off the street: three prior convictions, possession of a firearm, you went away fifteen years to life without parole. And in the eighteen months I served as Attorney General we had 12,000 people off the streets — one thousand a month by the time I left. The average sentence was nine years without parole. The average sentence for three prior felonies, 1 1/2 years without parole. That's a waiting period that actually has an impact.

Of course, there are the critics, and we all know their arguments, who say, "Oh, it's too punitive. We already have more people in prison than South Africa and the old Soviet Union, we're too punitive." No, we're not too punitive. The chances of going to prison in the United States are the same as in Canada, the same as in the United Kingdom and all these other liberal democracies. What's different in the United States is not the risk of going to prison if you commit a crime, it's that we have a lot more violent criminals running around the streets. I say we're not punitive enough in this country. In fact, the prospect of punishment today if you commit a crime, the amount of sentence and time served you can look forward to if you commit a crime, is 25 percent of what it was in 1950. Well, if we were too punitive in 1950, I'm all for it. Let's get back to 1950.

And there are those who say, "Well, it hasn't worked. We've put all these people in prison and it hasn't worked." And it's true, we've put 500,000 people in prison since 1980. We've increased the capacity from about 300,000 to 800,000, not counting jail. And they claim it hasn't worked. My argument is similar to what G. K. Chesterton said about Christians and Christianity. He said, "Christianity hasn't been tried and found wanting, it just has never been tried." And I think we have not followed the tough policies we have to follow as the revolving door statistics demonstrate. We started to, in 1980, and we've gotten tougher and it's borne fruit. We have seen a suppression of the crime rate, but can anyone seriously argue that we would have safer streets if we released the 500,000 criminals that we have put in prison since 1980? I had a standing offer when I was Attorney General — I'll release any twelve violent criminals in federal prison as long as they live in your household. I had no takers.

Now, there are those who say we can't afford it. The only time I hear liberals say they can't afford government was when it comes to the very first function of government, which is public safety. Anything else, they can afford, no matter how harebrained an idea it is.

We spend tens of billions of dollars a year on environmental programs. I saw a headline, we should spend \$30 billion more in this country scrubbing the air just a little bit more clean to get rid of this thing, because there's a one-in-something-or-other chance that someone's going to develop corns on their feet if we don't do it. On average in our environmental programs, and our safety programs, and our worker safety programs, and our highway transportation safety programs, we spend \$2.6 million to avoid the risk of one premature death. And in some programs, like asbestos removal from school, we're spending over \$10 billion for each death prevented. Well, the real carnage is in our streets. And what has changed the complexion of our life more than anything else is violent crime. If we used that \$2.6 million a year to prevent a premature death or serious injury — if we used the same kind of cost/benefit ratio — we'd be spending five or six times more on law enforcement than we are in this country. So I don't like to hear this notion that we cannot afford it. It's a matter of priorities.

One last point. There are those in our society who are congenitally unable to bring themselves to take a violent offender and remove him from society for any effective period of time. They just can't bring themselves to do that. And so they look around for other kinds of panaceas to deal with crime. They will look for anything except just taking the violent criminal out of society. And one of the principal panaceas they look to is this excessive focus on gun control as the answer to violent crime.

Now, I think that's a dead end. It's a diversion. It's a side show, and one of the principal dangers we face right now is allowing the real efforts to deal with violence to be hijacked and sent down this road of gun control. Are there some reasonable measures that can be taken, such as preventing minors from getting guns? Sure, there are some reasonable ones. But we know there's a broader agenda to deal with guns instead of dealing with criminals. There are hundreds of firearms already in circulation for each one chronic violent offender. And if you give me the choice which to take off the street, chase after two or three hundred guns or take one violent offender, I'll tell you which one saves lives. The New York Chief of Police boasted to me the other day, "I took 8,000 guns off the street in New York last year." My reaction? "How about taking 8,000 violent offenders off the street?"

They remind me of yuppie parents who have a little terrorist child who's running around the household, kicking people, knocking over china and pulling people's hair, and the Yuppie parents sort of walk out in front, removing things out of the way of the little terrorist instead of dealing with him.

But the biggest hypocrisy of all is that these people, the greatest, the loudest proponents of gun control, are not willing to enforce the laws that we already have on the books on gun control. This administration is killing the Trigger Lock program. It will not put these three-time offenders away, and they should be put away. It will not prosecute existing violent offenders who use guns and throw the book at them. It's not automatically adding the five-year enhanced penalty with no parole for someone who uses a firearm. So don't come whining about gun control unless you're willing to enforce existing laws against the real violent offenders who use guns.

The problem of violent crime has taken thirty years to get here. It's not going to go away overnight. It's going to take a lot of hard work. But I think we have to reject those who throw up their hands and say, "There's nothing we can do." And we have to reject the people who say that tough law enforcement policies won't work. I think there is something we can do — it takes will, it takes constancy of purpose, it takes a little bit of leadership to get the ball rolling, and it will take a fight ultimately neighborhood-by-neighborhood. But first we have to start by winning the fight state-by-state. Thank you very much. ■

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THE HONORABLE DICK ARMEY U.S. HOUSE OF REPRESENTATIVES

The complex issue of health care reform and the numerous bills proposed by members of Congress are candidly discussed by Representative Dick Armev (R-Texas). With his colorful style, Armev boils down the issues in the health care debate, and the political dynamics that are driving the issue. Armev states that health care reform has more to do with political ideology than with concern for having a healthy population. Armev describes the seven major health care proposals that were being de-

bated on Capitol Hill at the time of his remarks and each proposal's chance of enactment. He offers his opinion on the job the President and First Lady had done to that point on reforming health care, and the potential problems he thought they may face in passing their plan.

I was born in a little old town called Cando, North Dakota, and we have some terribly, terribly harsh winters. I had the privilege of living with Marion L. Armev who I call the queen of irreverence. My mama has passed on now, and she's up in heaven. But there's a little part of her that perches on my shoulder, and every now and then she whispers words that are just exactly the right characterization of some pomposity going on around me. And ordinarily, I just sort of say, thank you, mama. But there was a time recently when Mrs. Clinton got a few comments on me, and I managed to recover and get back, to defend not only myself, but Dr. Kevorkian. And if you think I was offended by the characterization, Kevorkian was absolutely livid. In that case I wasn't sure it turned out so well, whether I should thank my mama, or whether that may have been, in fact, a ghost of Christmas past that got me through that day. But, I have fun doing this job and I hope I do it well, and I hope it does some good.

But I would like to talk just in terms of what I think to be the political-legislative dynamics that will occupy the health care debate and subsequent legislative efforts. I got myself in a little bit of trouble the other morning with a group similar to your own, except in that room that morning, had I been a little more sensitive, I would have been aware that the room was tilting a little to the left. I missed that. I get the impression this room is tilting a wee tad to the right, and I might be a little more comfortable. But please understand, I am trying to explain to you what I perceive going on, and that doesn't necessarily say I condone it, nor that it is what I prefer to see going on. But I am going to give you my most objective evaluation of what is happening in health care.

The biggest problem in health care today is the one people don't dare to say. The problem is that the purveyors of gloom and despair have framed the debate. But Armev's admonition is, never trust data that speaks of gloom and despair coming from people who are in the business of peddling more government. And we have allowed it to be framed where the general consensus of opinion, which people don't dare refute, is that, we have a health care crisis in America. And let me just say that, as Porgy and Bess said, "it ain't necessarily so." And whenever I am grammatically incorrect, I like to cite somebody else.

We have, I dare say, the best health care system in the world. We have the best personnel, we have the best science, we have the greatest innovation, we have the greatest access, we have the greatest facilities. And we ought to be proud of that. We have no health care crisis in America. There is no shortage of health care resources or resourcefulness.

Now, we have problems. Problems that are seriously troubling the American people. And in this sense of concern that the American people have, they have quite wrongly turned to the government for relief. It is a mistake we happen to make in this country, a mistake we're often goaded into making. But what we ought to do is just take a long, sobering look at what it is we have, how it is performing and where is it malfunctioning, and then, answer the question of why is it malfunctioning. We have not done these things. We have done the typical thing done by people in Washington, which is to take a singular statistical fact and make a federal case of it. Now the fact is, at any given period, any given point in time on any day, you can get up and find 37 million Americans without insurance. The problem is, if you get up tomorrow you'll still have 37 million Americans without insurance, but they will be a different 37 million. And nobody wants to take time and sit down and analyze who are these people, why are they uninsured and to what extent is it anybody's business but their own.

Because we have this endemic refusal to deal with facts in the business of making politics, I get myself in trouble with my colleagues. I remember the whole Agriculture committee was terribly upset with me when I pointed out that demagoguery beats data every time in making public policy, but the fact is, it is true. And when we take on a legislative project, the first thing we try to assess is what is the demagoguery potential. That's why we did base closings, we beat the demagogue out of it. That's why we didn't do what was frankly something that was needed more, which was procurement reform. Because all of the demagoguery was on the bad side of it.

I mean, let's be realistic about this process. Politics are made by mere mortals. And they have all the foibles of mere mortals and they have all the self-centeredness of mere mortals. My line is that Chicago is a city of big shoulders and Washington's a city of big egos. And we need to understand that these personality dynamics are an essential part of the process by which your laws are written. And if we don't take time to understand these things, we don't understand what's going on in our world, and usually we're paying the consequences for that lack of understanding.

So the fact of the matter is, the health care debate is not based very much on fact, and fact will get you very little distance in this debate. Ridicule and indictment, of course, are the instruments of political discourse. Facts and figures, of course, are not, especially in a town that is staffed by people that can't be trusted with neither words nor numbers. And my line is, if you accept words and numbers, you'll listen to anything they have to say. But the truth is people don't discover facts in this town, they create facts and, of course, that brings us back to the problem we're now having in the Congressional Budget Office.

My line up, incidentally, from left to right, of the different plans, is slightly different than how it was described earlier. And part of the problem is that it looks as if on your graph here that Chafee and Cooper are neutral. They are on the side of Morgan. Anyway, there are seven plans before us. The McDermott Plan, of course, which is the Bless America with a Canadian system in total disregard of the fact that the only thing that makes the Canadian system workable is Canada is not America. But Congressman McDermott is a romantic and a psychologist by training. He's got enough formal educational training to have had some semblance of brain damage. I wouldn't say he has brain damage, but he has had enough education to have it, and you know that's a dangerous environment for anybody today. I always thought of that one when I sent my five children off to college. It was a curious thing I was doing, actually paying money so my children could be put in harm's way for brain damage. Nevertheless, I don't want to criticize Congressman McDermott. He's a bright and able person, and a responsible, caring person but I think frankly he's somewhat misguided. In fact, I was telling a colleague of his the other day, that McDermott was so misguided, he thought I was misguided. But, at any rate, it's hard for me to imagine that anybody that has any experience with reality, watching the world as it works, could seriously propose a Canadian system in the United States. You would think the revolt of visiting Canadian doctors and patients would be enough of an uproar already.

Then, there is the Clinton plan, which we all understand is a comprehensive bureaucratic nightmare.

Some of you may have noticed that we did an organization chart of the Clinton plan. A couple of facts about that organization chart are that we had about 10 of us working on that, we worked for an extraordinarily long time, and we blew a CD ROM. That's a true story. We did, and we sat through discussions with Ira Magaziner. You may remember Ira Magaziner is the person who is responsible for the reconstructing of the Brown curriculum in the 60s, who made his magnificent contribution to higher education at that time, and has now decided to take care of deconstructing American health care. He has twice now had an opportunity to refute the accuracy of our chart, and in neither case has he responded to us directly, although he has said publicly that he has problems with the chart.

My favorite characterization of the Clinton plan, which shows up in that organization chart is that this is trickle down health care. It really is, and the last person who has any say in the matter is the health care consumer. And of course on that basis, the White House thinks they simplified health care. If you give the American consumers no choice whatsoever except to follow the mandate of the government, you have simplified this world, because he now does not have to think about what he's doing, he just does what he's told. That is their variation of health care simplification. And, on the same token, physicians and other health care suppliers are to do what they're told as well, because there has been too much evidence that health care that professionals have been thinking for themselves.

Now, let's face it, if you construct a system of law and regulation that allows politicians and bureaucrats to dictate to doctors and nurses, you're going to destroy health care. You will drive the professionals first crazy, then out. Just as you have seen in Canada.

Then you have the Chafee plan, which I characterize as decaffeinated Clinton. They're fair about it, though, they don't give the mandate to the employers, they give the mandate to the employees, and that's, of course, always politically risky. When you give the mandates and the benefits to the same people you give the bills, they generally don't like it. The trick in building comprehensive government is to give the benefits in one place, and then give the bill another place. Then, if somebody complains about the bill, they're just being selfish. But if they get the benefit and the bill, then it is possible they could be construed as tactful. And, of course, that is something we don't want to admit on the part of constituents. This is the problem we have when constituents start getting uppity and talking back.

Then you have the Cooper Democrat Leadership Conference initiative. You know President Clinton is a Democratic Leadership new democrat, that's what he told us all through last summer. We now discover that the new democrat is a counterfeit conservative looking for work.

You then have the Michel Lott plan conceived by a task force of House Republicans. Now you're getting into the direction of actually building down government and reforming government impediments to the malfeasance of the private sector, such as comprehensive tort law reform and the repeal of state mandates and antitrust laws. Did you know that the members of the National Federation of Independent Business are prevented by law, from voluntarily and freely organizing themselves into a health care alliance so that they can communally join their resources and bargain to buy health care? That would be a violation of the antitrust. That is to say, you cannot form these kind of coalitions unless the government does. Sort of like citrus fruits in California. If the government creates the oligarchy or the cartel, then it is accepted.

But at any rate, you're really getting on that side of removing government impediments to private sector efficiency when you get to Michel Lott. This plan is really the first place you get to downsizing government and building on the freedom and intelligence and integrity of real people in the real world.

Then you get to the Gramm proposal. And Phil Gramm, of course, has almost gone berserk. He thinks people can handle all their own affairs. And you know Phil Gramm also spends a lot of time talking to his mama, if you ever listen to him. I just think maybe people in public office should be required to go home and talk to their mama more often.

And then of, course, the latest entry is the Nickles/Stearns entry, built on the work of the Heritage Foundation.

Now, what do I think is going to happen? That's what I was really going to tell you. I don't think this whole great debate is about health care. I think this whole great debate is about political ideology, and the more I watch the process, the more I watch the heavy-handed, close-minded manner in which the White House and the leaders of the House and the Senate are proceeding in this, the more I believe that we're really talking about something quite different. Many times you find yourself in an argument with somebody and it seems such a little trifling thing, and then you realize we're really frightened about something different and bigger than the incident of a debate. And this is, I think, really beyond that.

The President gave birth to his health care task force in the halcyon days of partisan arrogance soon after the election. They came back to town with a Democrat in the White House, a Democrat majority in the Senate, a Democrat majority in the House, and they really had the attitude we're in charge now, we want all the marbles and we got all our hands, and all the leverage and we're going to do things our way. And they created this semi-secret 500 person health care task force and we don't know who's on it. We know that there were two Republicans appointed to it. We also know that neither were ever invited to a meeting. We don't know how much they've spent, and we don't know what they spent money on. Now, the courts are examining that. In the meantime, we have seen their work product and their work product is clearly ideologically defunct. And it is a frightening work product. I believe that if this plan is passed into law, that the government will create the health care crisis that today it alleges. And you and I will all suffer.

At any rate, I believe that the President has put health care into a partisan pact, and has used health care as the definition of the co-presidency between himself and Mrs. Clinton. The fact is they said, very clearly, in agreement with one another, that this was a co-presidency and that she was going to have her role to play. And health care is what I think defines that co-presidency. And she, not having to suffer the slings and arrows of the electoral process, I believe, is more ideologically defined than the President. This is her bailiwick, and that becomes a problem when the President wants to leave that plan and try to find something that will work. Because in the final analysis, he must get something that will pass the House with 218 votes and in the Senate with 51 votes. And his plan won't get there. McDermott's plan won't get there. Public opinion is pulling the Clinton plan down and as the Clinton plan falls, so falls Chafee. So that, as we look at realistic possibilities for something passing into law, it has to be something that will be constructed out of either the Cooper Grandy plan, the House Republican plan, or the Gramm or Nickles plan.

I was talking about political reality, knowing if you will, that I sponsored the Nickles plan, the Gramm plan, and the Michel Lott plan, and that I am intrigued most by Nickles' and Gramm's. I have to tell you where we get to if McDermott's and the President's fall off the left end of the universe, and Gramm's and Nickles' fall off the right end. As much as I would like to see one of those options pass, I don't think it is very likely that it will happen. So, the construction in the end has to come from either the Cooper-Grandy or the House Republican. Now, we would think that the President is going to break the bonding on his left over his plan or something to the left of it, which is going to be an excruciatingly painful thing that I think is going to happen very late. And if he doesn't break with this ideological definition by the end of April, he's too late. I fear that he will not. That is to say he will have his feet held in that fire for as long as May or June. And if gets that late, it's too late.

But he will finally realize, "I'm not going to pass this, I've got to do something." I think the most self-serving words the President has ever said on health care is that, doing something is better than doing nothing. He's talking about the chances for a Clinton reelection here. He's not talking about the American people. And so, doing the wrong thing in that case is equally acceptable as doing the right thing, because he lives in a world of political imagery, and they're relying on the characterization that he's trying, that he's doing something. He's taking on the tough issue. So when he breaks down to the

partisan gridlock that he created himself, and his party rushes to reinforce him on health care, he's got to either go to Cooper/Grandy or the Michel/Lott proposal.

Most people are predicting that he goes to the DLC, to Cooper and Grandy, to the Republicans, building a coalition like you saw in NAFTA, and like you saw in the earlier years of the Reagan years, with the boll weevils and the Republicans. I don't think he can get to a coalition which delivers 218 votes in the House and 51 in the Senate. I don't think he can go that way in the House through Cooper and Grandy. He can go that way in the Senate, I believe, but he can't get it that way in the House, and the reason being the animosity that the left has towards Cooper. It is amazing the assault that they have levied at him, because Cooper and the DLC represents the struggle for the President's soul within the Democratic party. They can't let the DLC win, because that is redefining their party in a direction that is not mainstream in their party. It is mainstream in America, but not in their party, and the liberal domination of the Democratic party today cannot let Cooper win on health care.

And this speaks to a very difficult thing. Grandy, in terms of the Republican influence in that team, is going to be spending all of next year preoccupied with running for governor of Iowa. And Grandy has his problems in his Conference for having, one, been on the health care task force that created Michel/Lott, and then, two, to immediately after submitting that work jumping over and trying to negotiate a separate deal. So, it makes it very difficult for them to draw a lot of votes.

And the other influence that the President runs up against is that Republicans may be perfectly willing to form a coalition with this President as reminiscent of NAFTA or the Republican Boll Weevil Coalition of earlier years. But we're not going to form that coalition and provide 72 or 75% of the votes in that coalition, and then let the Democrats or a Democrat or any Democrat walk off with 85% of the credit. That is to say, the Republican Party in Washington, D.C. is getting smarter all the time. And, we understand that too often when good things have happened, they have run off with the credit while we have done the heavy lifting. And we're just not going to let that happen. So it is my belief that the President will find himself once again stymied in his efforts to come through Cooper/Grandy. Furthermore, Cooper/Grandy has an incredible foundation to it. It's founded on the idea that a government can manage competition. And to most Republicans who would cast a vote in the House, that is inherently incredible. So, not only is there an intellectual flaw in their product, but in the political dynamics as well.

Now if the President wants to pass a health care measure this year, he has to start working with the Michel/Lott proposal and constructing around that. In my estimation, it is the only chance he has and, in terms of the internal conflict in his party, is a terribly tough proposition for him. My prognosis is that he has a minimal to zero chance of passing his own plan, and that he has less than a 50-50 chance of passing anything. But if he passes anything at all, it's going to look more like Michel Lott than anything else that you see on this spectrum of seven bills. That's my prognosis in the matter. We're going to see extraordinary dynamics, a mixture of policy, politics and personality that's going to be as equally intriguing as NAFTA.

If the President doesn't achieve that this year, then I have to tell you more than ever before I believe that we will have a Republican or at least a conservative, that is Republican Boll Weevil, domination of Congress, when it comes back after the election. And that it will definitely go in that direction.

So we have a lot of things going on in this debate, and quite frankly they reach a lot further than any particular health care proposal. And I believe in the final analysis, conservatives win and liberals lose. Now, frankly, that is due to one fundamental fact. Conservatives are in touch with the people of this country, and liberals are not. The President emulates Reagan's strategy in trying to bypass Congress, and go to the people. It worked for Reagan because of the substance of Reagan. You can't take Senator Mitchell's substance to the people and have the strategy work. So, the President has to decide during the course of these next six months, whether he's going to be the leader of his party, or like Jimmy Carter, the victim of his party. And that's really where he's got to make this determination. He has

put himself in a partisan box around the issue that has the comprehensive interest of the American people, and that is going to make it very, very difficult for him to emerge as the leader of his party. It's a terrible position for a Democratic president to be in, and I hate it for him. Thank you for letting me be here. ■



JOHN FUND

EDITORIAL WRITER, *THE WALL STREET JOURNAL*

John Fund, who was awarded the Warren Brookes Award for Excellence in Journalism, addressed an "emerging consensus in America." From his perspective, a large majority of the American people want three main things from their government: accountability, improved quality and a reaffirmation of what he broadly describes as basic American values. Fund extrapolates on these three points and suggests that state legislators who take bold action to restore accountability, quality and values to the system will be the leaders of tomorrow. Fund states that the real political risk in these "pre-revolutionary" times is doing nothing to change a system that people are fed up with. Mr. Fund makes the point that many Americans feel disconnected from the political process and they must be inspired to get involved in the political process of government to renew this country.

Thank you. Thank you very much. I'm especially pleased to receive the Warren Brookes Award for Excellence in Journalism. Warren was one of the most inspirational figures in my early career. I probably learned more from him than from any other journalist. And I mean that sincerely. Warren, I think, lived up to H. L. Menckens motto, for what a journalist should do, which is to always comfort the afflicted, and afflict the comfortable. And Warren always reminded people that as a columnist, unlike a reporter, he got to choose who was comfortable and who was afflicted.

I have to take advantage of this opportunity to give you a few other words of either wisdom or trivia, depending on how you take it. I recognize, unlike a lot of journalists, the difficulties that you as state legislators have. You have to propose real solutions to problems, but you also have to be cognizant at every step of the way that there are political risks in angering special interest groups that are powerful, and could move to defeat you or frustrate your wishes. I'm here to tell you that I think we are at a very interesting juncture in American politics. One which only happens every two or three generations. A juncture in which the people are so fed up and frustrated that, at this point, good policy is now good politics. I've traveled around the country, I've examined a lot of polls, and I'm here to tell you that I think there is an emerging consensus in America. I think about 70% of the American people have coalesced around three core ideas. If you walk up to people on the street and ask them about these things, they won't articulate them quite the way that I will, but I think the vast majority of your constituents share these values.

The first is accountability. People are fed up with politicians who say one thing on the campaign trail, and do something else in office. If you don't believe me, ask George Bush what it's like to be an ex-President. And ask Jim Florio what's it going to be like to be an ex-governor of New Jersey. They want politicians to actually deliver on what they say. They want results. We are seeing this mood manifested in such movements as the initiative and referendum movement, which is increasingly taking power out of the hands of legislatures that are unresponsive, and taking it directly to the people. Consider the term limit movement, and the school choice movement. The school choice movement, by the way, has not been slowed down by the defeat in California. Be it Michigan, which passed charter school legislation last week, or be it the District of Columbia, which now has a superintendent of schools who announced last Wednesday that he was going to turn over the management of 15

schools in the District to a private firm. Be it Minneapolis, which has announced that a new private consulting firm will take over the management of every school in the city, with the president of that firm in effect becoming the new city school superintendent. School choice in all of its forms, is prospering.

I'm just back from Puerto Rico. They not only have a charter school amendment that is passed into law, they have a voucher system which is being implemented in one-third of their school districts. Now the charter schools and the voucher initiatives work together, not separately. The community schools set up by this charter school amendment have prospered magnificently by ridding themselves of the regulations that burdened the other schools. In this Puerto Rican experiment, more children are now transferring from private schools in Puerto Rico to these new charter schools than from the public schools to the private schools. I think this is empirical evidence that school choice does not mean the death knell of public education in this country. What it means is the re-invigoration of public education in this country through competition. Puerto Rico is only the first of many living examples that we're going to see state by state.

The second principle which I think has an emerging consensus behind it is that government is no longer a good buy. People increasingly are going to demand value for their money. If government were a consumer product, on the shelf of a store, it would be sued for false advertising, and it would be taken off those shelves for being defective. Voters today want to be treated at the state and local level as customers, not as constituents. What are the hallmarks of good customer service in the private sector? Quality, price, and after sales service. Government today is falling down on each of those three standards. Voters want performance, not more government investments. They want better, not more — they want value, not volume. And they will elect office holders that they are convinced will start to give them value for their money. In the 1980s, private business in this country went through a wrenching restructuring; downsizing, reorganizing, slimming down. It became lean and mean. We are more competitive now than we've been in decades, despite what you may read. The military in the 1980s went through the same restructuring and wrenching downsizing, but it came out a better service, as demonstrated by our magnificent performance in the Persian Gulf War. There is one major aspect of American life that has not gone through that restructuring, and that is the civilian public sector. It remains fat, bloated and out of control. We are developing a Twenty-first century private sector that is burdened with an eighteenth century governmental bureaucratic structure. The two cannot remain compatible for much longer. We must bring government up to the standards that the rest of society has come to expect.

The third principle focuses around the broad issue of values. When our founding fathers began this country, I think they made an interesting bargain with the American people — that in a free society, we are all responsible for our own actions. We are all responsible for living our lives and bringing out that which is the best within us. Obviously, if we get into trouble, we should look to family, we should look to friends, we should look to community, and only then to the lowest level of government. At the same time, we are a free and tolerant nation. As long as people practice self-responsibility, as long as they have to accept the consequences of their actions, we would allow a great deal of diversity and a great deal of eccentricity in this country. We would allow many people to live their lives as they saw fit, so long as they did not infringe on the rights of others. That bargain held in this country for roughly 180 years, but it has broken down since the 1960s. Increasingly, we have reversed that bargain. Rather than promoting personal responsibility and allowing tolerance and diversity at the same time, we have a growing number of people in this country who seem to think they should not be responsible for their own actions, that somebody else should pay or subsidize their decisions, no matter how wrong-headed or how foolish they are. And at the same time these very people who don't want to practice personal responsibility are demanding increasingly that everyone else in this country agree with them and are increasingly intolerant of other people. I point simply to the politically correctness movement and the anti-smoking campaign as two manifestations of this. Both of them have taken on the aspects of a religious phad almost, in secular form.

So, I think the American people continue to be interested in being tolerant of many values, but that is not the same thing as saying that some values aren't better than others. Some are. Just an example about the issue of two-parent families. Dan Quayle in 1992, when he dared to raise this issue, was laughed out of every media outlet in the country. Now Bill Clinton agrees with him. Eighty-three percent of the American people agree with him. There's an emerging consensus that two-parent families are better than the alternatives, despite the fact that those alternatives will exist, and we certainly should encourage those people who are in different circumstances.

Now, having listed these three values, I will make the statement that the political leaders who address these concerns are going to be the ones entrusted with power in the next decade, and the ones who will be honored as political heroes in the decade after that. We live in pre-revolutionary times. I believe there is a pent-up demand for reform and change in this country which has only begun to be met. I see it everywhere. I live in Jersey City, New Jersey, a city that has been dominated by a corrupt machine for 70 years. But the city that comes first to the edge of the abyss is the city that steps back from the abyss the fastest. Bret Shundler, a 34-year old Wall Street lawyer who has lived in Jersey City for only five years, ran for Mayor. He got elected in a splintered election with only 16% of the vote, but he proceeded to actually make a difference in people's lives. Community-based policing, cutting tax rates, slimming down the work force through attrition, promoting school choice and educational alternatives. He was rewarded with a 70% victory six months later in a city that is only six percent Republican. Jesse Jackson came in to campaign against him and said that he was aligned with the values of the Union of South Africa. The Black population of his district didn't listen; 40% of them voted for Mr. Shundler. He carried the Hispanic population, he carried the Asian population. In a district that is 65% minority, he won an overwhelming endorsement of his policies.

It happened in Raleigh North Carolina where Tom Fetzer became the first Republican mayor in that city's history. In fact, he became the first Republican to ever carry the city. He did it by campaigning on community-based policing, school choice, slimming down the bureaucracy, and performance-based audits of all city departments. And it's going to happen elsewhere. In California, just this last week, the Attorney General of the state of California approved a new initiative, which I predict will be on the ballot in November of 1994. I leave it to you to judge whether or not it will succeed. It's a civil rights initiative, but it's a different kind of civil rights initiative. Next year, voters in California will step into the ballot booth and they will read the following: "An initiative to prohibit against state discrimination or preferential treatment." This is what it says, it's very short. This is the summary: "Prohibits the state, its political subdivisions and agents from using race, sex, color, ethnicity, or national origin as a criteria for discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting. Exempts reasonably necessary sex-based qualifications in public employment, and public education, exempts actions necessary for the receipt of federal funds." The fiscal impact of this is that it will save about \$300 million that will be freed up for other programs.

Now I submit to you, that initiative will strike fear and terror into the hearts of many special interests in California whose entire livelihood depends on stirring up animosities between people and seeking preferential treatment, rather than being judged by the content of their character as Reverend King reminded us we should do. And I think, just like term limits and the Colorado plan which requires a vote of the people to approve tax increases, this will sweep the country. The legislatures who get ahead of this train and start pulling it, rather than running behind it, trying to catch up, are the ones that will be publicly rewarded.

Our biggest enemy in this country today is apathy. So many of your constituents today have just given up on the system. They have been told that they can't make a difference. The problems are too complicated. The bureaucrats and the experts are there to solve them, and all they should do is vote and send in their tax dollars and watch them being wasted. Well, I think we saw with Ross Perot in 1992 that people who had been disconnected and alienated from the political process for two decades

suddenly became energized again. We're seeing it in these state and local initiatives, we're seeing it in the school choice movement. People are waiting to be led. People are waiting to be told, "you can make a difference, we can renew this country, if you get involved again." We have to have some success stories to show them that it can be done, then I think we can inspire them to get involved again. Newt Gingrich says that we cannot renew American civilization in a country in which nine-year old kids are shot dead by thirteen-year old thugs who buy drugs from fifteen-year old couriers, who grow up to be eighteen-year old high school graduates who can't read their diplomas. Well, I'll agree. The problems in many of our cities are so bad that people are willing to take courageous and bold steps. They're willing to follow courageous leaders like Bob Woodson, where they weren't willing to in the past. Remember what Mayor Shundler discovered in Jersey City: That institution which comes to the abyss first, is the first one to step back and do it quickly. Now this will involve political risk-taking. I recognize that. I'm not a naive idealist, but I'm telling you now, that in these pre-revolutionary times, I believe the real political risk in America today is doing nothing. Doing what George Bush did and simply waiting for the problem to go away! George Bush was defeated, not because he took bold initiatives and angered special interest groups, but because he chose to do nothing. The same thing will happen to those of you who are not bold.

Now, I recognize the practical difficulties. You will stir up a hornet's nest of opposition. But let me tell you something I have learned in politics, and I've been around enough politicians to say that this is not just theory, but practice. When you take a bold and controversial stand, you see your opposition. It's visible. You hear immediately, through phone calls and letters and demonstrations. You hear immediately from those special interests whose livelihood you're threatening. You see the opposition up front. What you don't see, and what you don't hear, are the silent majority of people who may hear about your bold stand and bold statements, and say, "finally, someone who's not just a politician." Now they may be so disconnected from politics that they won't write you a letter, because they've never written a letter to a public official. They won't phone you, because they've never phoned a public official, because they didn't think it made a difference. That doesn't mean that they won't appreciate your stand when they hear about it on a talk radio program, or read about it in the newspaper. You may never hear from them, and you may never see them, until polling day when they go into the ballot box and vote for you, perhaps the first representative of your party that they've ever voted for.

But I assure you that you will lose votes by taking these stands. I don't pretend that that's not the case, but you may gain votes you will never see until polling day. Ronald Reagan left office as Governor of California in 1975. I grew up in Northern California and I was privileged to attend his Farewell Address to the California people, which was telecast live over all of the radio and television stations. He said something which has haunted me ever since, because it was so true, and yet so under appreciated. He said that for years the people of the United States have been hushed like children, and told that there are no simple solutions to our problems. They must be turned over to the bureaucrats and technocrats and the experts who will rule our lives for us and occasionally, should they choose, consult us. And, Reagan said, I'm here to tell you that it's flat out wrong.

This country was founded on a simple idea, individual liberty. The Constitution is a very simple document which only fills eight pages in the World Almanac. Reagan said, "I'm here to tell you that there are simple solutions to our problems, just not easy ones." And further, when he became President, he remembered that speech and he read it aloud in its entirety to his cabinet, and he concluded by saying, "We have been entrusted with great power, we have been entrusted by a people who are frustrated with solutions of the past. We will be judged by the extent to which we overcome those difficulties and we take bold steps into the future." And he reminded them, "If not us, who? And if not now, when?" That's the challenge I leave you with. Thank you. ■



VIRGINIA GOVERNOR GEORGE ALLEN

Just one month after his stunning election in Virginia, Governor-Elect George Allen delivered a rousing declamation on the principles of Jeffersonian Conservatism. Allen offers an overview of the issues in the Virginia gubernatorial race and the solutions he offered in his successful campaign. He states that the people of Virginia agree with the principles of Jeffersonian Conservatism, from toughening the criminal justice system, to the privatization of government services and promoting a positive business climate. Allen states that the ideas expounded throughout his campaign are neither Republican nor Democrat, but are ideas that the vast majority of people agree with, regardless of race, color or social class.

Thank you. It's great to be with you. It's good to be with my former colleague and now a fellow patriot for our cause in Virginia, Delegate Steve Martin, and other members of the Virginia Delegation — Robert Nelms, Delegate Peter Way, Delegate-elect Frank Ruff, Delegate-elect Dave Albo, and others who are here. Those folks will be leading the charge in the General Assembly as we go forward with our ideas.

It's great to be with you, the American Legislative Exchange Council. Having been a former member of the American Legislative Exchange Council, I know how important a role this organization plays in helping states be what Thomas Jefferson envisioned, and that is, democracy's grand laboratories for testing new ideas and initiatives and creative policies. Many of the Virginia ALEC leaders, and some of you are here in the room, not only Steve Martin but many of ALEC members and staff folks are helping in our transition team. Looking at how we can actually implement these ideas, not just talk about them, not just postulate about them, but actually act and put them into practice in Virginia so that we can be a model for the rest of the nation. Just so some of you who may not know me, I am a Jeffersonian Conservative. I'm a Republican, but if you want to know what I believe, I'm a Jeffersonian Conservative. And as Mr. Jefferson said, the role of the government is certainly to prevent people from harming one another but otherwise leave them free with their own hard work and their own ingenuity to improve themselves to the best of their ability. And that the government should not take from the mouths of labor the bread they have earned.

Those are the principles I ran on in our campaign. It's the principles of 1800, the revolution of 1800, so to speak, when Mr. Jefferson took over the Presidency, but it's also the principles that I think apply in the 1990s and the years beyond. That's what the government was formed to be. Not to be a meddling nanny or an oppressive enemy, but rather to allow people to achieve to the best of their ability, to make sure that everyone has an equal opportunity to succeed, regardless of their race or their religion or their ethnic origin or their gender. An equal opportunity to succeed.

And the government should give citizens the tools to achieve, which are a positive tax policy and good education, to allow someone to achieve to the best of their ability.

Now that's contrary to the other philosophy, which is guaranteed equal results. There's a fundamental difference between equal opportunity and equal results, and that's the fundamental difference which we find so often regardless of where the races are or the campaigns are across the country.

Many of us in Virginia over the last decade have looked to other states with a great deal of envy because we've seen creative new Jeffersonian policies implemented in such places as South Carolina by Governor Carroll Campbell, in Wisconsin by Governor Thompson, in Michigan by another ALEC member who I got to know, John Engler in Michigan, and even, if you can even believe it, in such places as Massachusetts, under Governor Weld.

I'm here to say that Virginia, with the help of these gentlemen here and many others in Virginia, are going to look to be leaders once again in Virginia. We want other states to again look at Virginia for leadership and reform. And some of the ideas and issues that we're right now poised and ready and prepared to implement in Virginia, originated with ideas and research and background that came from the American Legislative Exchange Council. And many of the folks are right now, as I said earlier, helping us put it into place.

My friends, our ideas are not just Republican or Democrat ideas. Clearly more Republicans agree with them than Democrats, but let's make sure that we espouse these views all over.

I didn't concede a single vote in our election, I don't care where it was, who it was, how they voted in the past. The Hispanic Chamber of Commerce agreed with our philosophy and endorsed me. There is a group called African-Americans for Allen, 80 percent of them were former Democrats but they agreed with our principles. Asian-Americans cared about our ideas on education and job opportunities.

And so our ideas are not ones that have to be looked upon as being Republican or Democrat or broken up by race or gender or region. They're ideas that I think the vast majority of people, if we reach out to people, will agree with, and that's the way that we'll get these policies implemented. We have to reach out and get more people involved, get that broad public support which is out there for the ideas that are espoused by the people who are leading in ALEC.

While many issues contributed to my election victory, there's probably no other more important than the plague of violent crime, and Virginian's desire to have a Governor who will put public safety at the top of the state government's priorities. This was in today's *Richmond Times-Dispatch*. You don't get it up here. You have the *Washington Times* at least. At any rate, this is the editorial page from the paper.

The first thing says "this is Surgeon General Joycelyn Elders' brain." She's holding an egg. Next slide says, "this is Surgeon General Joycelyn Elders' brain on legalizing drugs," with an egg frying in a pan. And then it says, "Any questions?"

Attorney General Barr has given us the sermon on crime and certainly, believe it or not, General Barr was instrumental in our efforts in our campaign. For those of you who are running in campaigns across the country, there is an important lesson that you want to keep in mind that our race, our campaign, offered. The question to the people of Virginia was: do you want a Governor who advocates a five-day waiting period in gun control as the centerpiece of his or her anti-crime policy or do you want a Governor who'll make your communities and neighborhoods safer by abolishing a lenient parole system and keeping violent repeat offenders off the streets?

The message and the answer from Virginia, loud and clear, is that the people of Virginia are smart. They may have polls that say "Sure, we'd like this and we'd like that." But they realize that the crime is being committed by repeat offenders because of a very lenient parole system that we unfortunately have in Virginia. And when given a choice, across Virginia, they wanted to crack down on the criminals. They were not going to fall for gimmicks.

And that's why the most important issue in our campaign, and one of the most important things that we're going to be focusing on, is abolishing our lenient parole system in Virginia, and restructuring

sentences. William Barr is going to give us guidance and leadership along with Richard Cullen, who is a former Eastern District of Virginia U.S. Attorney, and that's going to be the key thing that we will push. Not just to talk about it on the campaign, but also to execute.

We're also going to show how it can be done in a cost effective and innovative way. Not just to go forward with abolishing this leniency, but also to have these violent criminals serving time, because that's what the Virginians that I know want. But it's not enough to put them behind bars. I want them to work when they're behind bars. Why not have them work and help defray the cost of their incarceration?

Furthermore, we have to look very seriously at privatization. Many of your states, such as Kentucky, Tennessee, Florida and Texas, have privatized some correctional facilities. But in Virginia, they haven't done it yet. They've gone along with that elitist establishment view that the government knows best, and we all know the government rarely knows best. So we can look at ways to privatize that segment of government.

Another key, as Delegate Martin said in our election, was those of us, and many people in this room and across the country, want to have a strong economic empowerment program, people have had enough of the government spending their money wildly and the only solution they ever come up with is raising more taxes. We have to cut government waste, and it's got to be more than rhetoric. ALEC had great papers I remember, on how having higher taxes hurts one state or the other. How every time Massachusetts raised taxes, the folks in New Hampshire would get more prosperity.

The point is the way to create economic prosperity is not higher taxes. What we need to do is streamline our government, privatize services, and look at ways to run the government more efficiently. The first action that I'll implement as soon as we get through the swearing-in ceremony is empowering a blue-ribbon strike force of people from the outside to examine Virginia's government, to look at where we can end duplication. They'll also be charged with looking at regulations, especially these regulations that are stifling small businesses.

The first place to look, and I challenge you in your states to also look, is wherever you have a regulation that exceeds the federal minimums, there ought to be a unique justification why you have to exceed the federal regulations, which are sufficiently burdensome in themselves. Unfortunately in Virginia we have regulations that right now exceed the federal minimums. That puts us in a competitive disadvantage with the Carolinas or Tennessee. We understand in our administration, and ALEC understands, that we're in a war of competition and we're going to make this state a better state in which to do business. We also will look in this blue ribbon strike force will also look at privatizing governmental functions. Its report is not going to sit on a desk or a shelf collecting dust like the Grace Commission's did. Whatever we can implement by executive order, we will. Whatever needs legislative approval, we'll get the legislature to do it, and we'll have the support from the public to do it.

Every member of my Cabinet — whether it's Kay Cole James in Health and Human Resources or whether it's somebody in Natural Resources or Economic Development or Education — all are going to be known as a competitiveness cabinet. Every single thing that they do has to be viewed by a guide as to whether or not what they're doing is going to make us more competitive with other states, make it a better state in which to invest, take a risk, and create jobs. And we always will have open doors and open ears to the citizens, small businesses, corporations and the people of Virginia, to make their government better.

The other thing that has to be reviewed, besides looking at tax laws, are the regulations and the bureaucrats. You have to slip the hands of the bureaucrats, especially with regard to regulations. One way to do that is to put a discipline on the government. We have environmental impact statements for everything — where you have to worry about woodpeckers and louseworts and all manner

of flora and fauna. In the Northeast you have to worry about owls and so forth. And that's fine. But you know what? We also ought to care about people and their property and their jobs, and we're going to require economic impact statements to be done.

So, my friends, we have a mission, we have a full agenda. We want to make sure that we have a comprehensive Workfare program in Virginia. In other words, work rather than idle behavior for able-bodied people in Virginia. We want to revitalize our inner cities with empowerment ideas. We want to address the declining academic standards in our public school systems, not with attitudes and not with a bunch of gimmicks, but with accountability in academics and empowering communities and parents to get involved, and making sure our higher education system is affordable to everyone, not just to the wealthy elite.

But it's also important that you know that we're going to have a positive business climate in Virginia. Virginia is going to be open for business again. And next time ALEC has a meeting, a national meeting around the nation's capital, get on the other side of the Potomac where we share your values a whole lot more than they do here.

My friends, we also realize we have important things to do and we have a common mission in protecting our state's rights from a meddlesome and mandate-infringing federal government. I ask those of you here today to join me in a message to the Congress and to President Clinton, to promise that if he ignores us, we'll mount an all-out effort to protect the people of our states from the pests on the Potomac.

So my message to the President is this: Remember those days when you resided in the Governor's office. Grant our waiver requests. Free us from being federal hostages. Allow our Commonwealth and the various commonwealths and states of the union to be a laboratory for democracy and we'll get along just fine. As far as I'm concerned, when the President's initiatives are beneficial, such as opening up new foreign markets with fair free trade agreements, such as the North American Free Trade Agreement, I'll support him. But if Virginians' rights are threatened or our prerogatives are being usurped by the federal government, I'm going to stand up for Virginians. We're going to oppose the ideas of the federal Department of Education that try to teach students self-esteem. They need to earn self-esteem. We want to have rigorous academic standards, not outcome-based education dictated either by the federal or state government.

And if they have counterproductive tax policies, we'll fight them. And if they're going to come up with a health care program at the federal level that takes away patient choice, takes away the ideas of a marketplace and competition, and somehow doesn't think individual responsibility is important, I'm going to stand up to him and fight him because it's not good for Virginia.

For those of us in a right to work state, if he's going to keep pushing for those striker replacement bills that abrogate our right to work law, I'll stand up to him against that as well. Those of you that are not in a right to work state, stay that way. It gives us a competitive advantage in Virginia.

The people in Virginia have made it clear that we're going to take a stand. We're not just running just for the heck of running, we are here to take a stand on issues. It's important that state legislators, those of you who are members of ALEC, stand with the governors, stand together, stand firm for the principles of federalism upon which this country was founded.

These are exciting times. They are times for great opportunity not only for Virginia but for all of the United States of America, and I look forward to working with ALEC in the years to come to embolden the people, to empower the people, and make this the great country that it was intended to be — for and by the people. Thank you all so very much. ■



HONORABLE CHARLES STENHOLM
U.S. HOUSE OF REPRESENTATIVES

Representative Charles Stenholm (D-TX) has been a staunch advocate of the balanced budget amendment to the Constitution. The 1993 vote on a proposed balanced budget amendment in Congress was very close, and was the topic of Representative Stenholm's address. Stenholm discussed the President's 1994 budget and its failure to cut spending in critical areas. Entitlement spending, such as COA's, were pointed out as areas that need to be "on the table" when trying to cut spending. He also explained the political difficulties involved with passing the balanced budget amendment.

Thank you very much. First off, let's just talk about the balanced budget amendment before I talk about some of the specifics and where we are. It was mentioned earlier about the effort to come up with a Constitutional amendment to create a balanced budget, something that I've been working on since I've been here.

There are lots of good arguments against using the Constitution for balancing the budget, and I hear them regularly. But there are also lots of good arguments for amending the Constitution, which Thomas Jefferson proposed early on, but unfortunately, did not get into our original Constitution. Basically, the argument is to keep current generations from borrowing from future generations, unless we borrow in productive assets.

The unfortunate thing about the creation of the red tape that we have seen is that we're borrowing money to meet current operating expenses. We're borrowing the money in order to meet today's wants and desires, not building into our educational infrastructure, not building into our water systems, our sewage systems, our highways, or job creation. We're borrowing in order to meet what people today have basically come to believe is an entitlement.

Now, there are people that are trying to keep it simple, and when you try to keep it simple, and when you do keep it simple, you get criticism from all of those who want to make it much more complex. But basically, it's an eight sentence article. We just say: Total outlays for any fiscal year shall not exceed total receipts. The limits on debts of the United States held by the public shall not be increased until three-fifths of the whole number of each house shall provide by law, and that such increase to be by roll call vote. Prior to each fiscal year the President shall submit a balanced budget. I have not been here quite as long as Representative David Harelock has been in this business, but I have never served with a President that submitted a balanced budget, and I have served now with four. I just think the President, if he is going to entice the Congress, that he ought to submit one himself, and I haven't seen that yet. But that's one of the provisions we've put into the Constitutional amendment.

No bill to increase revenue shall become a Law unless approved by a majority of the whole number of each house by roll call vote. Now, this is one that gets a little controversial, as some of my conservative friends believe that we ought to have a super majority in order to increase taxes. Well, that might be a good idea, but I don't think it's necessary because I have noticed that politicians who vote to raise taxes don't stay around near as long as those who don't, particularly in this day and age. But again, we try to come up with how we can get 290 votes, and to all of those who believe we need to make it more difficult to raise taxes, I say quite simply, show me the vote. I will be the 290th. But we're no

where close to getting 290 votes for a super majority. In fact, some of the most vociferous opposition to us is coming from those who want a super majority that borrow money, and I don't mind that one at all, because I think that needs to be tougher.

We'll, of course, provide that it can be waived during the declaration of war. We provide the Congress shall enforce and implement this article by appropriate legislation. Total receipts include all receipts, and total outlays shall include all outlays. Now, that is radical to some, but I am one of these that has never understood why some expenditures are off budget. I've really gone mad that no one appreciates what I've heard from so many of you in city, local and state governments, and what you've pleaded to us, which is to quit sending us things that you tell us to do without sending the money. Unfunded mandates.

You'd be happy to know that there is another effort that is going on right now in which, hopefully, there are 218 of us who are going to stop all unfunded mandates. We've got an Unfunded Mandate Coalition, with Pete Guerrin of Texas, Gary Conner of California, Pat Roberts of Kansas. It's a bipartisan effort, in which we're attempting now, through an informal caucus, to tag with a red tag, everything that even smells like an unfunded mandate, so that we can warn our colleagues when you're about to vote on these, this is one of those things that people back home are tired of. And we believe that by doing that we're going to have a revolution in that area this coming year.

Let me talk specifically about the balanced budget amendment and where we are right now. We have 260 cosponsors in the house. I can almost count the 290 votes, but I am not going to make that mistake again. You remember last year we counted 303 a couple of weeks out from the vote, and then we lose by 9 because 12 of our cosponsors chose to vote "No" when they had to put up or shut up.

Some interesting things are happening now. Paul Simon is leading the effort in the Senate. He believes he has the votes, but again, you can't count on them until you see that they are there. We're working right now to build the kind of PR support that's going to be necessary to focus on the vote when it occurs in the Senate beginning the week of February the 22nd. That's when the debate will start in the Senate, and finish hopefully, sometime during that week. We came up eight short in 1990 in the House and nine short in 1992.

Now, as we look at this year's strategy let me give credit to my comrades in arms in this one. Bob Smith of Oregon, Olympia Snow of Maine, Jim Inhofe of Oklahoma on the Republican side. L. F. Paine of Virginia and Joe Kennedy of Massachusetts on the Democratic side. Now, I would encourage those of you, as we are talking about this upcoming vote in New Jersey this week, if we can get Joe to express himself to some of our more liberal colleagues. Joe does an excellent job making one point. That is, unless we can bring about a balanced budget and stop borrowing money, the time is going to come that there is no money left for social programs. It will all have to go to pay the interest on the debt that we've built up. It's a simple point but it's a very valid point. One that needs to be made over and over to all of those who believe that balancing the budget is no longer important. And this is what really shocks me. We have conservatives in this country that say debts really don't matter. To some it's just avoiding taxes.

The strategy we followed through the 80s that I was a part of and I want to try to be as bipartisan as I can in this endeavor, was that if we increased the debt enough we can put restraint on spending, but that didn't work. And it's not going to work. You're not going to have any restraint on increasing taxes or cutting spending as long as you can borrow money easily. That's true in our personal lives, so why would anyone think that it would be different in our political lives. A lot of people believe that somehow we're different once we get elected. I hate to shock you, but we're not. A lot of people will fight you on that comment, but let me give you an example.

We have 260 cosponsors of the balanced budget amendment. Now, I want each one of you in the audience to assume, for a moment, you're the congressman of your respective district. And you are a cosponsor of the balanced budget Constitutional amendment, and you've been typically making speeches if you're for it. You're telling the people that I'm for the Constitutional amendment to balance the budget.

Let's roll back a little bit this year and let's say for a moment when the President's budget was submitted this year, you didn't vote for it because it raised taxes, and it didn't cut spending enough. That was the rhetoric of every one my colleagues. I didn't vote for the President's budget because it didn't cut spending enough and that was my excuse when I voted "no." And I was looking for one more vote, because if we had one more vote we would have been able to have an alternative that would have cut spending and would have done a better job on the deficit. We lost that vote, but those that want it, like Tim Penny, got a concession from the leadership of the House. He said, "I'll vote for this budget, Mr. President, but I demand an opportunity to vote on additional spending cuts before the end of the year." He got it. We proposed \$93 billion in additional spending cuts, and you would have thought the world was coming to an end.

The Administration sent out all of the top guns to kill this spending cut proposal even though they had proposed 2/3 of them themselves. Every special interest group in the country, including the American Association of Retired People, one of the most powerful, that even had a smell of a cut in this bill began to oppose it. And it worked.

But now let's suppose for a moment that you are a member of Congress that has endorsed and cosponsored the balanced budget Constitutional amendment, and you have said, "we need additional spending cuts." Now, what's your speech today? You voted against the budget because it raised taxes and did not cut spending enough, so you're for balancing the budget. But you voted against the spending cuts, which 18 of my colleagues on the Republican side of the aisle did, because not a single Republican supported any budget effort this year in the House. And that was understandable, politically. I don't say that derogatorily just factually. But even more important, 18 of my conservative Democratic friends voted against this too. It is an interesting point. Eighteen, and it would have only taken four more to get the spending cut. Now let's roll forward to next year, which is going to be an interesting budget year, especially since I'm on the budget committee.

We have to begin to cut spending. You know those who have said that balanced budget Constitutional amendments wouldn't work only had to look at state governments. Spending from 1930 in state governments as a percent of total national income has gone from 12% to 14%. But spending in the federal government during that same period of time has gone from 12% to 28%. Don't tell me a Constitutional restraint is not helpful in putting restraint and giving those of us in Congress an excuse for saying "no" even when it means saying "no" to spending in those areas that affect our own constituency.

The one area of the budget that we are going to have to find the political courage to deal with is the so-called entitlements. I don't know where we ever got the notion that we in America are entitled to anything other than a chance. But today people will literally un-elect us if we don't say that you're not entitled to a cost of living adjustment. In business you can't give your employees a cost of living raise unless you're making money. If you're losing \$250 billion a year as we are in Congress, how in the world can anyone expect to be entitled to a cost of living adjustment, unless you're prepared to say, "I want mine today so that my grandchildren will pay interest on it." The sad thing about this is that when you talk individually everybody agrees, but when we talk politically nobody agrees. And that's what's creating the problem. This year I tried in the budget process to do what some said was rather heretical, but I hope we're going to get it done next year. I tried to put the same cap on entitlement spending that we're putting on discretionary spending.

Now let me point out one area in which the President's budget passed this year deserves more credit than what it's been getting. We put a freeze on discretionary spending. If you read this morning's *Washington Post*, you see we have some interesting problems within the Defense community right now. And I worry about that. We cut a heck of a lot out of Defense. In fact, there's only two areas of the budget that we cut. The first is Defense and the other is Agriculture. And Agriculture is nearer my heart because that's my district, that's my life, that's why I'm here. But we're on everybody's whipping list. The only program that was ever delineated for specific cutting by anybody running for president last year was the honey program. Well, rejoice America, we have cut that \$16 million. It's gone.

We froze discretionary spending and that's something that is significant. Just watch what happens to all of government. My subcommittee is responsible for the reorganization of USDA, and we're going to do it. We have to do it. We've got to take USDA and prepare it for the next century. Agriculture has changed, but government has not. We froze discretionary spending for five years and that's significant, as you know from your own budgets. But what happened to entitlements? We didn't freeze it. Entitlements are going to go from \$750 billion to \$764 billion to \$1,035,000,000,000 in the same five-year period.

You know, here's something else we have to start educating ourselves about. Back home where I come from, if you get a hundred dollars this year, you get ninety-nine next year, that's a cut. If you get a hundred and one, that's an increase. But here inside the Beltway, people literally come unglued if you suggest that if inflation goes up by 3 percent, and you get \$102, you've not been cut. But that's our problem. We're going to have to treat all programs, such as entitlements, just like other aspect of government. And we're going to have to make conscientious decisions, as legislators, as to what is the higher priority and what is the lower priority, and how are we going to live within our means.

That's why I believe that we must have a Constitutional excuse, reason, pressure, pry bar, leverage, whatever you want to call it. We must do that and I encourage you and your individual states to contact your Congressmen and Congresswomen, and your Senators, to join a lot of other interested individuals in putting the proper legislative pressure on us. Could it possibly be that we could generate enough pressure to balance our budget by the year 2000, which is our target? Could we gradually bring the spending cuts down to get us there by the year 2000? Could it possibly be that we could rally America behind us to do that? Somewhat like the other side was able to rally America against the Penny/Kasich bill by saying we want to balance the budget but for heavens sake, don't cut me. That's your challenge. I look forward to working with you. Thank You. ■



HONORABLE TIM PENNY
U.S. HOUSE OF REPRESENTATIVES

The budget process and the failings of a Congress driven by partisanship and public opinion polls, are the topics discussed by Congressman Tim Penny (D-Minn.). Penny expresses his belief that while prevailing public opinion should provide important guidance, it must be balanced with facts and personal conviction, because public opinion does not always offer practical solutions. He also castigates the partisanship

that has hampered efforts to balance the federal budget, and expresses his sadness about the far distance Congress has strayed from the principles espoused by our Founding Fathers. Penny also gives a succinct overview of the 1994 budget debate and the subsequent failure of the Penny/Kasich spending cut bill.

I have been in Congress now 11 years. I will be returning home at the end of this term next December. My district in southeastern Minnesota is home to Red Wing Shoe, the Mayo Clinic, Hormel Meats, Land O'Lake Dairies, and the Valley of the Jolly Green Giant. So for those of you who don't know a great deal about Minnesota, that gives you some sense of where I come from.

I have some colleagues here who were introduced earlier Gil Gutknecht, a Republican legislator from Rochester, Minnesota, the largest town in my district. He is also a member of this organization, and incidentally, one of the candidates to replace me next year.

So I am with a familiar crowd in many respects. I haven't met a lot of the legislators here in this room before, but I do have a sense of common ground with all of you in terms of the approach you take to public policy making and the role you see for government in the lives of American citizens.

I was only 30 years old when I arrived in Washington as the First District Congressman. But it did not take long for me to learn that my concept of public service based on the lessons of our Founding Fathers, was considered an old fashioned notion in the Nation's Capital.

The chief architect of our Constitution, James Madison, and his colleagues, designed a representative democracy whereby candidates would be elected by the people but would be free to balance parochial and national interests, the prevailing political winds and the long term good of the whole.

George Washington, in his first inaugural address, anticipated a Congress with no local prejudices or attachments, no separate views nor party animosities. And John Adams warned against the dangers to America's liberties if the government may become the choice of a party for its own ends, not of the nation for the national good.

These were not idealists in a pure sense. They were practical politicians, but they understood the dangers of fierce partisanship in a legislative environment that was supposed to bring about consensus for the national good.

I learned those lessons not only as a child but as a student of government at Winona State University. But what I found when I arrived in Washington in 1983, was a situation much different than that envisioned by our Founding Fathers.

Modern day Washington is driven far too much by opinion polls and partisanship. This is not to say that there are no redeeming qualities evident in our Nation's Capital. For all of its faults, somehow it works. In fact, there are moments when Congress rises to a very high standard, such as the courageous action to reform the Social Security Program back in 1983, which was among the first votes I was able to cast, and one of which I am most proud. Also, the serious and the sobering debate that occurred on the Gulf War Resolution in 1991.

Yet I can't help but think that our Founding Fathers would be disappointed with much of what passes for political leadership in today's Congress. Instead of leadership, too often we are given polled leadership, which is one of the reasons Congress has been unable to come to grips with the Federal budget deficit.

Opinion polls clearly demonstrate that voters do not like tax increases nor do they like cuts in their favorite programs. No big surprises there.

Republican legislators in Congress eagerly translate that sentiment into a no new taxes pledge, while Democratic legislators position themselves as the champions of popular programs. It obviously sells well with enough voters to secure reelection for most incumbents. But that attitude offers no solution to our budget problem.

Public opinion must be reflected in national policy. That is the essence of our democracy. However, public opinion is not set in concrete, and no surveying can measure accurately the nuances in public thinking on any given issue.

Furthermore, as is demonstrated by the budget debate, public opinion doesn't always add up to a solution. That great philosopher, Pogo, once said, "We have met the enemy and it is us," and in a very great sense, that is the message in this budget debate.

But voters will respond to reasoned leadership. And voters cannot make an intelligent judgment about what needs to occur to balance this budget unless we tell them the facts, and they hear very little from politicians that is constructive and enlightening when it gets down to the budget debate.

My view is that elected officials need to balance public opinion against their own convictions and an analysis of the facts. I think Benjamin Franklin said it best when he wrote, "The internal satisfaction of a good conscience is always present, and in time will do us justice in the minds of the people, even those at present the most prejudiced against us."

Unfortunately, as things stand in Washington today, it falls to retired legislators, like former Democratic Senator Paul Tsongas and former Republican Senator Warren Rudman, to speak the truth about the budget. And as I leave next year, I am disappointed to see a great Republican legislator from North Carolina follow me out the door, Alec McMillan. And maybe we can do, as retired House Members, what Tsongas and Rudman have done as retired Senators, and work together to bring better focus and better information to the American public on this budget issue. As most of you know, Tsongas and Rudman have formed the Concord Coalition, an organization dedicated to the task of educating the American public about the nature of the Federal deficit and the tough, painful measures that will be required if we are to eliminate the red ink. Tsongas and Rudman know that Congress needs encouragement to do the right thing, and they hope to create a coalition of active, informed voters who will support those candidates that are prepared to deal honestly with the deficit.

The example of Tsongas and Rudman is also instructive in terms of the bipartisan nature of the effort. For a decade, Democrats blamed Ronald Reagan and then George Bush for the deficit, while those Republican Presidents attempted to persuade the public that the budget would be balanced except for

the big spending Democrats on Capitol Hill. Again, in today's Washington, partisan finger pointing has become a substitute for decision making.

Early in my tenure in Congress, I lost favor with Democratic colleagues on the Education and Labor Committee because of my willingness to work with the Republicans and my occasional vote for Republican amendments. There was little interest among Democratic leaders in cooperating with the minority party, because after all, the Democrats, by virtue of our majority status, controlled that Committee. Too often, that is the way things work in Washington, D.C.

Republicans, lest you think I am here simply to bash my own party, are not free of blame either. During the recent debate on President Clinton's proposed budget, Republicans were more interested in scoring political points than in offering a credible alternative. They criticized Clinton's tax increases, but when Republican Minority Leader, Senator Bob Dole, offered an alternative plan, it had very little in the way of additional spending cuts and less overall deficit reduction. In other words, it was more business as usual in the Nation's Capital. I became a Democrat in 1960 when I was in the fourth grade. That year I voted for John Kennedy in a mock Presidential election at my country grade school in Mansfield Township in Freeborn County. But our democratic system of government has always been more important to me than the Democratic Party. I have attempted to follow the admonition of the President I voted for that year when he said, "Our task is not to fix the blame for the past, but to fix the course for the future."

I firmly believe that the public will have more respect for Congress if Congress demonstrates more respect for our Founding Fathers and the democratic principles that they espoused. The Founding Fathers were true leaders who well understood and warned us against the dangers of partisan factionalism. They valued majority rule, but stressed the importance of minority rights. They chose a representative form of government because they wanted elected officials to lead and not to simply follow public opinion. After ten years in Congress, I am more convinced than ever that our Founding Fathers had it right.

And as a Democrat, I liken myself to the founder of our party, Thomas Jefferson, particularly when we talk about budget issues. Thomas Jefferson once said, "I place the economy among the first and most important virtues and public debt as the greatest of dangers to pursue our independence. We must not let ourselves load up with perpetual debt. We must make our choice between economy and liberty or profusion and servitude. If we can prevent the government from wasting the labors of the people under the pretense of caring for them, they will be happy. The same prudence which in private life would forbid our paying our money for unexplained projects forbids it in the use of public money."

Simple words and common sense. There is precious little common sense in national budgeting today. That is why I viewed the Concord Coalition as such an inspiration, demonstrating that we can work together a bipartisan way to address the root cause of Federal deficit spending. Demonstrating that the public needs to be better challenged to face the facts about the elements that comprise this Federal budget deficit.

Following on that example, John Kasich, a Republican from Ohio, and myself, worked with a bipartisan group of thirty legislators, evenly divided between the two parties, to construct a deficit reduction plan which came to a vote in the closing days of Congress. As it was mentioned earlier, we came within four votes. I think our great disadvantage is that our measure was brought up just as Congress was ready to adjourn, and the story about these budget cuts was lost beneath headlines relating to the Brady Bill and campaign reform.

Had the public been more aware, I think we would have put this package over the top. But because the public wasn't aware, business as usual prevailed in Washington, D.C. Our package wasn't a cure-all

to the deficit. But it did represent a significant combination of spending cuts, touching virtually every aspect of the Federal budget. It was a \$90 billion package, evenly divided between discretionary spending and entitlement spending. And when you realize that entitlement spending is not only half the budget, but the fastest growing portion of the budget, clearly those items need to be on the table if we are ever going to solve this problem.

Willie Sutton, a noted bank robber, was once asked why do you rob banks, and he responded, "Because that's where the money is." And when the Penny-Kasich Plan put cuts in entitlement programs into our package, it was because that's where the money is and you can't solve this problem unless you address that issue.

But we also took some advice from another noted philosopher, Aristotle, who once said, "A feast to which many contribute is better than a dinner provided out of a single purse." And our sense was to share the sacrifice, to spread the pain, to convey to the American public that all of us have to participate in balancing this budget. We can't simply point a finger at someone else's program and pretend that it alone will cure the deficit.

Bill Clinton in his inaugural address and in his State of the Union speech had the right rhetoric about shared sacrifice. He simply had the wrong budget. We put together fifty-seven Democratic votes in support of the Penny-Kasich Plan and came within a handful of votes of passing the measure. And I think, since I am a Democrat, it bears noting the composition of this group of Democrats and what they were up against.

I believe the fifty-seven Democrats who supported Penny-Kasich represent a new generation of leaders, and they cut across geographic lines. Unlike Democratic budget coalitions of the past, which largely reflected southern conservative defense Democrats, this Democratic coalition spread across the country. Democrats from New Hampshire to California, from Washington state to Florida, from the Rust Belt to the Green Belt, from the Mountain States to the Mississippi River Valley, joined forces to make a strong stand for fiscal responsibility. These new Democrats are out to change the way Washington does business, starting with the budget.

These Democrats reflect the mood of a national electorate that is increasingly skeptical of Washington and hungry for change. It's a safe bet that this budget coalition will resurface in the future, and may even hold the balance of power in the House in coming years.

Of the 41 Democrats who opposed President Clinton's budget in August, a strong majority, 27, voted for the Penny-Kasich cuts. But even more significant and alarming to the Congressional leadership and to the White House, is the fact that fully 30 Democrats who helped make the passage of the Clinton budget possible voted for the Penny-Kasich cuts. With only 43 Democrats required to make up a majority of the House when combined with a united Republican bloc, clearly the White House and the leadership cannot take these new Democrats for granted.

A generational divide was also evident in this vote, and I don't think it should come as any surprise. Of those Democrats supporting Penny-Kasich, nearly 80% had served in Congress less than five years. In fact, a third of our votes came from first term Democratic Members. These new Members have yet to be assimilated into a Washington system that rewards those who spend. And moreover, it seems that these legislators are intent on fighting the system rather than joining the club.

These 57 Democrats stood up to intense pressure from their own party leadership, from the Clinton Administration, and from the interest groups that have historically been supportive of the Democratic Party. Many were approached by powerful Committee Chairmen with not so subtle hints that a vote for Penny-Kasich would jeopardize their standing in the House. Others were literally threatened, in writ-

ing, by Appropriations Committee leaders, sadly both Democratic leaders and Republican leaders, that a vote for Penny-Kasich would kill projects important to their home state.

Before I move on to my next portion, there's a quote from Robert Kennedy that sort of applies to the pressure you get within institutions like Congress. It might even happen in some state legislatures. It goes like this: "Few are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Yet it is the one essential, vital quality for those who seek to change a world which yields most painfully to change." And he wasn't referring to Congress, but it certainly applies. Congress is resistant to change because all of the structures within Congress deal with power and control, and the more junior Members are empowered, the more it threatens the power structure. And frankly, I am a political scientist by education, but it is a misnomer to call politics a science. Sadly, however, in recent years we have gone out of our way to make it a science, with our own acronyms and our own terminology. And when we're talking about the budget, with baseline budgeting and other terms that really don't honestly convey what's going on, we've sort of shut the public out, we've sort of shut the people out, because they can't figure out who's telling the truth.

When Democrats say we've cut a program, for example, we cut Medicare in Clinton's budget by \$56 billion over five years. Sounds big and it sounds painful. But, Medicare spending will still increase by 45% over the next five years.

So the debate in Congress is essentially dishonest and is meant to confuse, not to enlighten. It is meant to kind of keep others from getting into the game. And that is why interest group politics is so prevalent in Washington, D.C., because those are the only organizations in America that can afford to hire somebody, a lobbyist, to get into the game with the politicians. We have excluded the public, and it is no wonder they are losing faith in this system of government.

But within the institution, because power is where it is at, and control is what it is about, newer Members are subjected to intense pressure from senior Members to toe the line, to get along, or you will not be a success.

Gil Gutknecht was in my office recently, and it was coincidental that he made reference to a quote that I saved for my quote file, and it is from Mother Teresa, and it goes something like this: "God did not call on us to be successful. He called on us to be faithful." Or maybe paraphrased for those of us who are public servants, He called on us to serve. And in Congress there is too much pressure from the more senior Members to do what they want for their purposes under the guise that somehow it is going to make you a more influential player for your purposes. And it is hard for newer Members to stand up to that.

In addition to the internal pressures, a daunting lobbying effort was launched by a variety of key Democratic support groups, from organized labor to social service advocates. Although it received relatively little media attention, it was one of the most intense lobbying efforts against a legislative proposal seen in recent times. In fact, if you listened to any of the debate or read any of the accounts of this debate, you may have heard the Administration and other special interest advocates claiming that somehow the Penny-Kasich cuts, which represented one cent on the dollar over five years, not terribly Draconian, would destroy the economy, derail health care, undermine our nation's defenses, and cripple our domestic agenda.

It reminds me of the adage that a half truth is like a half brick. You can throw it twice as far. That is what we were up against in this. And it worked, because the interest groups ginned up phone calls and letters to Capitol Hill, urging Members to vote no. Freshmen Members were somewhat surprised to find out that the interest groups could generate as many calls as we got in opposition to this bill. But that was the case. The phones rang off the hook leading up to this vote. Not from the general tax

payers, but from members of interest groups who sent mailings, outrageous mailings, telling them that Penny-Kasich was a threat to everything they believed in.

At the risk of alienating all of these constituencies, the 57 Democrats stood firm. It is important to note that these new Democrats are not inclined to cut every category of spending simply for the sake of reducing the deficit. However, they do understand that long term economic growth requires less government borrowing and more private investment. And they also know the difference between consumption spending and investment spending.

And if you look at our list of cuts, they were focused on the consumption side of the budget. These Democrats understand the difference between a COLA and a highway. There are differences in the way those dollars spend out in our economy. There are differences in terms of what each of those dollars means to the long term strength of our economy, and these Democrats know the difference.

They desperately want to change today's budget policies which represent borrowing from the future to pay for the present. And more importantly, these Democrats evidenced their willingness to work with the Republicans. There is nothing wrong with bipartisan cooperation. That is the essence of the democratic system. We're to come together and work together towards a consensus. Not to say that we can't have differences which may manifest themselves in a partisan fashion once in a while. But partisanship should not be our primary purpose in public service, and for too many politicians, it has become so.

And while I am a Democrat, it distresses me to admit that while Republicans are 40% of the Membership of Congress, they perhaps have 14% of the influence and power, and that is simply not right. It is undemocratic.

Let me close with two quotes. The first from George Bernard Shaw, "Democracy is a device that ensures that we shall be governed no better than we deserve." That's perhaps a more cynical observation than I would like to make. I prefer to use a 60 year old quote from Walter Lippman, because it applies to today's political environment in which the public is clearly in a state of agitation and displeasure with what they see in the political arena. And these are Walter Lippman's words: "Those who are in revolt are looking for new leaders. They are looking for leaders who will talk to the people about their duty and about the sacrifices they must make, and about the discipline they must impose upon themselves, and about their responsibility to the world and to posterity."

Americans, throughout our nation's 200 year history, have always been willing to rise to the challenge when properly called upon to do so by real leaders who don't hide the facts from them. We need a more honest debate in American politics today, not one driven by opinion polls, because those are transient measurements. Certainly not one driven by partisanship, because that stands in the way of progress. We need leadership in America that will challenge American voters to face the facts and face the future. And when called upon to do so, I am confident the American people will respond. ■

NATIONAL ORIENTATION CONFERENCE
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ROBERT L. WOODSON
PRESIDENT
NATIONAL CENTER FOR NEIGHBORHOOD ENTERPRISE

Bob Woodson, founder and President of the National Center for Neighborhood Enterprise, discussed the urban problems that face our nation today. He argues that we must change how we approach solving the "pandemic" of poverty and violence in our inner cities. He indicates that we must not treat inner city neighborhoods and their residents as "passive agents" in solving these problems, because in order for a solution to be successful it must involve the people that will be affected. Comparing the inner city to the human body, Woodson says that we must tap the ability of the inner city to "heal itself," stressing the importance of empowering people to be agents of positive change.

Thank you. I want to just say how much of an honor it is to share the podium with John Fund and Samuel A. Brunelli and all the other distinguished people. ALEC is one of my favorite organizations. Speaking here is like coming home. A lot of times, our views expressed are not always popular, but that's all right.

I would first of all like to have you meet the speaker of my house, Ellen Woodson, my wife, who I dragged out here this morning so she would know what happens when I leave the house. So she won't have to ask me, what is ALEC? And also the National Center sponsors every year what we call our low income communities night, and that is our achievement against the odds, and ALEC was one of the sponsors this year and many of you attended. And we have one of our first awardees here, Ethel Branch Cooper. And of course, I am always honored to be with David Caprara. David Caprara is one of those inspirational people when you're around him you just feel better as a consequence. But Dave has always put his body and his mind where his heart is. And he is the arms and legs of the empowerment movement and one of the principal architects and chroniclers of the recent resident amendments to the housing act. It was David who, as a staff member of the National Center, sat with the resident leadership in the room and helped craft those seven amendments which were passed into law 430 to 0 in the House. With the opposition of all the major unions and the housing authority, we beat their brains out very good. When I spoke at your Michigan Conference afterwards I got some invitations to address prayer breakfasts as Rev. Woodson. Let me just say that I am honored to be addressed as a minister.

But I am a Baptist. There was a time when 80% of all black folks were Baptists, and then we learned how to read and then became Methodists. Then when we went to the universities, we became Presbyterians, and when we learned how to split intellectual hairs, as to whether God could be three forces, we became Unitarians. But when trouble occurs, we all come back to the rock. So, I am a black Baptist that has come back to the rock. So, a lot of my views and opinions are expressed in the belief that the crisis we are confronting today is not a crisis of program, it is not a crisis of policy. It is a moral and spiritual crisis.

I'd like to talk about solutions to the urban problems that confront us today with an emphasis on what can be done to stem the tide of violence. Because we do have some concrete experience of solutions that work. I think we spend too much time celebrating problems when we need to talk about solutions.

I have said on numerous occasions, and you are well aware, that some of the traditional approaches have failed.

Someone once said, if you want to go someplace you've never been, then do some things you've never done. That if we keep doing what we do, we'll keep getting what we got. Which means that we've got to redirect not only our thinking, but in some cases, our beliefs. People do not do that which they do not believe first. And so many of us have been conditioned to believe, by traditional top-down government approaches to program. And yet we have known that the \$3 trillion that we have spent on poverty has not worked. And poor folks now realize that which was spent in their name hasn't worked. Many poor people are like that fellow that staged a sit-in for 9 months at the Mississippi lunch counter and when they integrated they didn't have what he wanted.

There's nothing more disappointing. But we have got to understand that solutions exist if we begin to approach the problem from a very different paradigm. A paradigm to me is merely a prism through which we see problems or opportunities. And the prism to which I see the solutions to some of the problems is the analogy of the human body. God has invested a human body with the power to heal itself. That the natural state of the human body is one of health, and that's why, whenever you intervene or intrude into the body, it rejects anything that is imposed in it. That's why to impose a transplanted organ into the human body, you have to try to fool the body into believing that what's being done to it is in its interest. That's what repressive drugs attempt to do.

We have been trying to impose solutions on grassroots and low income communities for years and we wonder why those imposed solutions don't work, because the body's natural inclination is to reject it. And that's why grassroots people reject that which is done for them on a mistaken belief that they are merely a passive agent in everybody's fantasy about what is in their interest. And so many times, we fail to understand that indigenous to the human body is the power to heal itself. Neighborhoods are organized the same way. Indigenous to neighborhoods are the capacity and ability to heal themselves. The most effective form of treatment of the human body is when you insinuate medicine in such a way that you trigger the body's own immune system. That's why AIDS is so devastating, because it interferes with the body's ability to heal itself. So if we look at strategies that we have been employed over the years, it is almost like the old story in the 1960s of the Andromeda Strain. I am a lover of science fiction movies. And one thing in the sixties that really struck me was the Andromeda Strain. Maybe you remember the movie in which this missile's nose cone went into space and came down in this little town and killed everybody, except an old man with asthma and a baby with colic. And so some scientists came in with their suits and took this man and this baby, and took the nose cone down about eight levels into this laboratory to study why it was killing, so that they could find out how to cure it. But they could not understand why everybody else died except this old man with asthma and this little child with colic.

And so, instead they studied this nose cone, and they had an electronic microscope that was focused on it and they were trying to analyze just what happened. Scientists in the laboratory began to die. But what was going on here? Was it a virus? A bacteria they couldn't find? Finally, they concluded that the very instrument that was used as the means for producing the cure was creating the problem. The virus was being fed by electrons from the microscope. So the very agent that was put in place to cure the problem was creating the problem.

And a lot of what we have been doing in poverty programs have, in fact, had the same effect as this electron microscope. It has reinforced the very agents it was developed to cure. Look at the years between 1930 and 1940, the years of the Great Depression, when we had a zero GNP growth and a 25% unemployment rate. What impact did it have on family dissolution? Was there a great epidemic in drug addiction? No. Were families dissolving? No. Did we have tremendous crime problem? No. Could people walk in their neighborhoods? Yes.

Even in the black community, from 1940 to 1972, we saw the greatest growth in the economy, yet we saw a decline in those social indicators. The black community is often used as a moral barometer of the health of this nation, yet up until 1959, only nine percent of black women had babies out of wedlock and thirteen percent of white women had babies out of wedlock. This was a time when, in fact, we had no political representation and no representation on the courts. We were being lynched everyday in some places in the south. Yet, even in the face of all of these tremendous social odds, the black community's moral and social infrastructure shielded it against all of these threats from without, and we thrived. But precisely in the presence of the electron microscope, i.e. the poverty programs, and all these other instruments that were supposed to cure us, we have seen a nine percent illegitimacy rate going to sixty percent, and in some communities eighty percent. That's a tremendous increase over a short period of time, and only a fool would ignore the possibility that the instrument put in place to bring about the cure, like the electron microscope, is creating the problem.

What we are finding is that we keep looking to the wrong place for the solutions. Racial discrimination is a problem, it is not the most important problem. It is not there because of the person in the White House. Decisions made in your own house are much more important than decisions made in the State House or the White House, if you allow me that Jessie Jacksonism.

And so, even in the face of these problems we did not tear each other apart, we did not have the crime rate. What has happened is that a lot of these electron microscopes that we put in place have undermined the moral and social centers of influence in the community, so that people have now become detached from that which has insulated them in the past. Therefore it doesn't matter that we have increased social spending. And I'd like to talk about that paradigm, the human body, and about those families and people throughout this country that aren't experiencing problems. You've got to look at the glass, the part of the glass that is half full, and not the glass that is half empty. Yes, there may be 60% of households with out of wedlock births, but there's 40% that are not experiencing these problems. And the question is, what explains the success of those exposed to the same environment as those that were not? As in the case of the Andromeda Strain, they found that the baby with colic and the old man with asthma generated some internal chemical response inside the body that acted as an insulation against this virus.

And so, what we don't do in society is study why the baby and the old man survived to determine what lessons we can draw from those who have survived in the presence of the disease. I asked criminologists, social scientists, the whole academic community, including a lot of my conservative colleagues, how many of them have ever gone to low income communities and inquired about why certain people are able to raise children in the midst of poverty without them succumbing to poverty itself? How they can raise children in the presence of drugs without producing drug addicts? How they can raise them in the presence of criminals without their children succumbing to criminality? We do not do anything to study why certain low income people survive and thrive, to determine what our new solutions to these problems should be.

We, at the National Center, spend all of our time studying success. If you want to learn what works, you have to find out what works. You don't go to someone who has failed and say, "let me study your failures so we can learn what is successful." Would you go to somebody who has lost 10 elections and say, we want to study why you didn't get elected, so we can know what strategies to put in place. No, you go to a person like Dave Halbrook, a man from Mississippi, a white man from Mississippi, who is elected in a district with a 74% black population and ask him how he achieved what he did, because he delivers for people. He knows that what you've got to do is go to people and speak to their real needs. So, it is not enough for us to recruit low income people who have succeeded as props for our policies. We should go to them and study why they survive and determine how we can develop policies that are responsive to their survival techniques. We must find out what they need in order to promote their self-development and the development of others like them. So we really need to do

things like what we did in Philadelphia. In 1983, the city of Philadelphia was plagued by wolf pack attacks, groups of young blacks between the ages of 15 and 17 in groups of six, were attacking shoppers, knocking them down, taking rings and purses. They got so bad that the Civic Center had to close down, as did movie theaters and shopping centers. The police increased their patrols but nothing worked. The social service hustlers came in and that didn't work, of course. And so, people were perplexed.

So, we went to a group of grassroots leaders, eight of them, and asked, "what is it that grassroots can offer that all the traditional approaches cannot?" And they did something very innovative. They said, "why don't we go to the house of corrections, or prisons and sit down with the inmates and ask them if they would join a crime prevention task force." So we went to the prison and 125 inmates signed up. They each gave us the names of three young men from their neighborhood and said, "bring them to the prison for us to tell them that this is unacceptable behavior. Because they respect us."

And so we got some money from an entertainer and rented school buses on this one Saturday and brought 300 of these young men to the prison. And we had a table with food and the inmates had sessions and seminars with these young people. And they told them that this was unacceptable behavior and the following Monday, the wolf pack attacks stopped all over the city. And it never started again.

In other words, what they did was take part of the disease and apply it as the solution. Because these young men, even in prisons, said, "no one ever came to us to ask us for solutions. Only for what we have done to create the problem, and what you have done by coming to us like this is to give us the respect, give us an opportunity to demonstrate that not all of us are vacant of values, are vacant of concern for our community. Some of us only need an opportunity to express to you and to our city our capacity not just to hurt, but also to heal." The challenge that we face is, are we willing to look to these indigenous healers, these indigenous antibodies? Are we willing to bring them to the table and ask them what they can offer by way of solutions, and then try to help? You have to understand that what stops crime, what stops violence, is not more prisons or more police on the street, even though they all may be needed.

It is when young people have lost a sense of moral content, when life no longer has meaning for them, that it does not matter what you do to them, because they don't expect to live anyway. Why would they be afraid to go jail or afraid of the death penalty? That's like threatening a kamikaze pilot with death. Death is his business.

And so the only thing that challenges these young men on the streets is when you go to the centers of moral power. Many of these young men who are leaders in this community have had religious conversions and they bring people to God in their own way. If we are serious about stopping crime, then we will do what we can to empower those that have the power to influence the moral decisions that these young people make. Empower those that can bring content to their lives and a sense of purpose.

When Cain killed Abel, God could have just struck him dead, but God did something worse. He told Cain that he would travel the rest of his life without purpose. And a lot of young people are living in hell, not because of poverty or anything else, but because they have had purpose withdrawn from their lives. And the indigenous institutions, those moral centers, have the capacity to restore their sense of purpose so that they have something to lose. And when they have something to lose, then they will work for something that they can gain. Only then will we see a change in our society. Are we up to it? God bless you. ■



HONORABLE JOHN SHARP
TEXAS STATE COMPTROLLER

As Comptroller of the State of Texas, John Sharp is responsible for finding new methods of providing government services for less money. In this address, Mr. Sharp outlines what he has learned in the process of reforming wasteful government programs. Mr. Sharp finds that government and business operate very differently when they are in financial trouble, and, most importantly, compared to business government has "forgotten who their customers are." Sharp contends privatization of government services and bringing market competition and accountability back to government are necessary solutions to reducing the spending costs of government.

Thank you. I just want to make a note that what Harold Brubaker was talking about regarding the spotted owl is going to make a hell of a lot of people in East Texas and the southern United States rich. If you go into East Texas and you go into the southern part of the United States right now, you will find something that is overlooked by a lot of people. And that is the fields that were once wheat, and things like that, have all kinds of seedlings on them right now because of what has happened to lumber prices. It is really a remarkable story of what happens sometimes with regulations and the resulting economic impact.

For those of you that are worried, even though I've got the whole two hours to give the speech, I don't give long speeches. I give short speeches. Warren Chisum will tell you why I give short speeches. It's because we had a special session of the Texas legislature one time on a sexually transmitted cattle disease. I know, that's hard for some of you people to believe, but we did. I didn't know a lot about it at the time, but fortunately, I, nor none of my roommates had ever had that particular one, and so, I had to go. But I know my district was anti-disease and that's the way I voted.

So anyway, after the session was over Chisum and I had to go up to West Columbia, Texas to give a speech to the Independent Cattlemen Association of Texas and cattle raisers and the farm bureau, etc., on how I voted on this cow disease.

We were promised a thousand people would be listening to our explanation, but as I went down to this place, there was high water, there were downed power lines and trees on the road. It was terrible. I had written an hour and fifty-eight minute speech. I took two weeks to write pretty much everything you'd like to know about this particular cow disease.

So, we got there and we waited forty-five minutes in a hall that did, in fact, seat a thousand people. And six people showed up. And what happened was Hurricane Alicia had come through four days before and they forgot to tell me. Warren and these six other Aggies that this deal had been called off. That's how many people showed up. Six.

One gentleman, who was 92 years old, his name was MacAlister, said, "Look boy I came through about forty miles of this stuff. I want to hear the speech." And I said, "That's great. I'll give it a try because I won't be asked again. This is my last shot at it. I appreciate the opportunity." So, the other

live off and I began the speech. After an hour and eight minutes, I had lost him. He didn't die, but he was asleep. So I walked up to him and pretended I was done, and I asked what he thought about the speech. And he woke up and cleared his eyes and put his hand on my shoulder and gave me the best political advice anybody has given a young politician. He said, "Look here boy, I run 426 head of mothercows and their calves, and when the winter is cold and hard and there's nothing for those cows to eat, I go out there once a week with a whole truckful of hay to feed these cows. But I want you to remember something as long as you're asking folks for a vote" And I said, "Yeah, please, Mr. MacAlister, tell us." And he said, "If only six cows show up, I don't drop the whole darn load on 'em." So, I try to remember that, and as a result, I give reasonably short speeches and I'll do that pretty much today.

A bit of warning for those of you that are from out of state. We want you to buy lots of lottery tickets while you're here. We're tired of policing our own people, so just participate in the whole deal.

One of my jobs, and thank God I don't have it anymore, was to start up the lottery. I had the lottery for the first eighteen months or so, and then I turned it over to some other agency. But, let me give you this warning about that particular business.

First of all, the odds of winning are 16 million to one. Yeah, you say it's not bad. Consider that your odds of getting struck by lightning while you're here is about 15.2 million to one. Your odds of getting attacked by a shark, even though you are 200 miles from the water, are only 13.2 million to one.

Let me tell you this one story, and this is a true story, and I know you expect nothing but the truth to come from the mouth of an elected official. But when I was running the lottery, my best friend, who is a deacon of a very prominent Baptist church in Austin, Texas, walked into my office one day with a \$2,500 winning ticket. He said, I want my cash. I said, Fred, we don't do cash, this is a government organization. We write you a check. And he said, can anybody find out about that check? Yes, I said, we have thirty pastors that have open records requests everyday for any and all winners above \$600. And he said, forget it, it's not worth it.

So he starts walking out and I grabbed him and I said, look, you're an attorney, you're a learned man. I'm just an Aggie with a bachelor's degree, but I can tell you that anybody that walks in with that ticket, we will give them \$2500. He looks at me and I said, if your secretary or a law clerk walks in with this ticket we will give them the money. Then he can give you \$2,400 and keep the hundred. Surely there's somebody who wants to make a hundred dollars. "Oh," he said, "that's legal?" Right.

Anyway, he does. He goes into his firm, he picks a brand new law clerk. She is about twenty years old, and he says, "Would you like to take this ticket across the street and make a hundred dollars by cashing in and give me \$2,400. Won't that be wonderful?" He borrows a friend's red and black Volvo with tinted windows, drives her over to the lottery headquarters, waits in the parking lot, sends her up there.

She's been up there forty-two minutes and when she comes back down she's crying. He said, "What's the matter?" And she said, "They took our money." And he goes, "What do you mean, they took our money?" And she said, "I sort of had a bad student loan two years ago."

Now, he pretty much took that as a sign that he didn't want to play, but I can promise you, I and that law clerk owe him. She will be a partner before long, and he's one of my biggest contributors, and I appreciate it.

So, if you have bad student loans, if you're behind on your child support in Texas, or worse, if you owe me some money, don't cash in your lottery tickets.