This is even more troubling when viewed in the context of what the administration is doing to capture theater missile defense systems under the ABM Treaty. The administration has shown a willingness, if not an eagerness, to include detailed performance limitations on theater missile defense systems. Under the guise of clarification, the administration has come up with nothing short of a new treaty regulating theater missile defenses.

The administration's overall approach to the ABM Treaty poses three overlapping problems, which might be viewed as near-term, mid-term, and long-term problems. Let me address each of these in turn and offer what I believe to be logical and achievable solutions.

In the near-term, the United States must respond to an expanding array of theater ballistic missile threats by developing and deploying highly effective theater missile defenses. These threats are an undeniable and salient part of the new security environment. Thanks to the efforts of U.S. industry and our military services, we are well positioned to acquire highly effective theater missile defenses and to allow these capabilities to grow along with the threat.

Unfortunately, the administration's current approach threatens to preclude promising theater missile defense options and establish an artificial technological ceiling on the growth of those systems that we do deploy. This approach is strategically unwise and legally unnecessary.

The solution to this problem is relatively straightforward. The ABM Treaty simply states that non-ABM systems may not be given capabilities to counter strategic ballistic missiles and may not be tested in an ABM mode. Nothing in the treaty talks about the performance of non-ABM systems and it would be very unwise for us to get into the business of regulating these systems now.

The answer is simply to define what a strategic ballistic missile is and to establish as a matter of U.S. policy or law that theater missile defense systems comply with the ABM Treaty unless they are actually tested against a strategic ballistic missile. A commonly used definition of a strategic ballistic missile, which the United States and Russia have already agreed upon, is a missile that has a range greater than 3,500 kilometers or a velocity in excess of 5 kilometers per second. If this definition were used, the United States and Russia would be free to develop and deploy a wide range of highly effective theater missile defense systems without having fundamentally altered the letter or intent of the ABM Treaty.

Even if we take this step, however, we will still be faced with a mid-term problem. U.S. territory will inevitably face new ballistic missile threats, which our theater missile defense systems are not being designed to counter. North Korea already has an ICBM program in development and other countries will almost certainly be able to exploit readily available technology in order to acquire such capabilities. The administration is simply not preparing adequately for this threat.

If the United States is to deal with this problem in an effective manner, the ABM Treaty will have to be altered to allow for the deployment of a robust national missile defense system. While we can begin immediately with the development of a national defense system that is in compliance with the ABM Treaty, eventually we will need relief from the treaty. This will be necessary in order to cover all Americans adequately and equally. Deployment of several ground-based missile defense sites, perhaps supplemented by enhanced mobile systems, could provide a limited, yet comprehensive defense of the United States. This could be achieved with relatively modest changes to the ABM Treaty, changes that would not undermine United States or Russian confidence in their deterrent forces.

But even if we accomplish this goal, we would still be left with a long-term problem having to do with the fundamental purpose of the ABM Treaty. Ultimately, if the United States and Russia are to establish normal relations and put the cold war behind them, they will have to do away with the doctrine of mutual assured destruction, which lies at the heart of the ABM Treaty. This can and should be a cooperative process, one that leads to a form of strategic stability more suited for the post-cold-war world. Such a form of stability might be called mutual assured security and should be based on a balance of strategic offensive forces and strategic defensive forces. We must once and for all do away with the notion that defense is destabilizing and that vulnerability equals deterrence.

If the United States and Russia are serious about reducing their strategic nuclear forces to levels much below those contained in the START II agreement, we must be able to fill the void with missile defenses. We can do this cooperatively with Russia and other concerned parties, but we must make it clear that the United States is intent on evolving away from an offense-only policy of deterrence. We will undoubtedly require strategic nuclear forces for the foreseeable future to deter a broad range of threats, but in a world of diverse and unpredictable threats, we can no longer rely on these exclusively.

Mr. President, I hope the administration will reconsider the range of problems I have discussed today. I believe that there are reasonable solutions within reach, if only we seek them. An incremental approach that deals with these problems in phases may facilitate cooperation and help wean both sides away from the comfortable yet outdated patterns of the cold war.

Mr. President, I yield the floor.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

EXTENSION OF MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent for an extension of morning business for 10 minutes.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

LEGAL REFORM

Mr. FRIST. Mr. President, I rise today to discuss the need for legal reform in America. Our civil justice system is broken. The changes in our tort law system that were introduced 30 years ago had merit, but like many other aspects of our society, what began as a good idea has been the subject of ceaseless expansion and is now totally out of hand. We are now by far the most litigious country on Earth, and we are paying a huge price as the result.

Mr. President, I come to this issue from a different perspective than most of my colleagues. I am not a lawyer. I am a doctor. I have seen firsthand day in and day out what the threat of litigation has done to American medicine. I have watched my colleagues every day order diagnostic tests—CT scans, blood tests, MRI scans, electrocardiograms—that were many times costly and unnecessary for the good of the patient. They were ordered for one simple reason—to create a paper trail to protect them in the event a lawsuit would ever be filed. It is called defensive medicine, and it happens every day in every hospital throughout America. It alters the practice of medicine and drives the cost of health care higher and higher.

Mr. President, I have also treated patients who were injured by allegedly defective products or in automobile accidents, and I have watched as their families were contacted by lawyers, urging them to sue before anyone knew the real facts of the accident.

Mr. President, I know we will face stiff opposition, but changes must be made in our legal system. It is costing us billions of dollars each and every year and, perhaps more importantly, it is turning us into a nation of victims.

Our product liability laws are a particular area in need of reform. Our present system costs this Nation between $80 and $120 billion a year. A 1993 Brookings Institution survey found that pain and suffering awards alone cost American consumers $7 billion each year.

Mr. President, 50 to 70 percent of every dollar spent on products liability today is paid to lawyers.

What really is the problem? It is fashionable to talk about the big verdict cases, cases like the customer at McDonald's who spilled hot coffee in her lap, or the fleeing felon in New

York who was shot by police, only to recover a $4 million verdict against the police department.

But those cases are just symptoms of the illness. The heart of the problem is that our civil justice system does not effectively weed out specious claims that lack merit.

Our judicial system has built in rules that are meant to do that, but they simply do not work well. The summary judgment mechanism is one and rule 11 of the Federal Rules of Civil Procedure is another. Unfortunately, if you ask most defense lawyers, they will tell you that summary judgments are rarely granted, and rule-11 sanctions are almost never imposed.

As a result, almost any case that is filed today stands a good chance of getting to the jury. And, Mr. President, given the unpredictable nature of juries, not to mention the staggering cost of defense, businesses and insurance companies simply make the decision to settle the case rather than play Russian roulette with the jury. Day after day in this country, insurance companies and businesses pay $25,000, $50,000, $75,000, or more, to plaintiffs who have filed cases which lack merit, either factually or legally.

So who pays for all this? The American people do. Insurance companies simply pass the costs along in higher premiums and businesses pass the higher premiums along in higher product costs. We spend five times more of our economy on tort claims than our Japanese or German competitors. This makes our American products more expensive, and eventually it chases American products from the marketplace.

One example that I am personally familiar with is a device called the left ventricular assist device, essentially a type of artificial heart. The product is housed in a clear polyurethane cover. Without it, many patients would die as they waited for a transplant.

The device allows them to live for weeks and sometimes months as they await a donor heart. Unfortunately, because of the rash of recent lawsuits involving medical devices which contain polyurethane component parts, the polyurethane manufacturers are simply threatening to pull their product from the marketplace saying they cannot afford to produce the product anymore. That means it will not be used in a broad range of devices.

Mr. President, if that happens, who will the makers of this device turn to for that polyurethane housing? And if they are unable to find a supplier, the device simply cannot be made and, I can tell you, based on firsthand experience, that patients will die because they will not have that bridge to transplantation available. I have transplanted these patients before. Without it, they would not be alive today.

Mr. President, to those who say that litigation costs are not the cause of products vanishing from the marketplace, just ask Cessna Aircraft Corp. They quit making small planes 9 years ago because of liability concerns. But thanks to last year's legal reform that limited an aircraft manufacturer's liability for planes over 18 years old, they announced on March 15 of this year that they would, once again, start making planes.

Mr. President, tort reform will make a difference. The real problem is that our juries are taking the place of our legislatures in determining which products offer enough utility that they should remain in the marketplace, despite their risk. We now trust juries to redesign airplane engines, to rewrite product warnings, to second-guess medical diagnoses, and even to place values on the price of a human life.

It is because of runaway jury verdicts that you no longer see many American manufacturers of football helmets, or diving boards at pools of motels, and you can no longer get a money-back guarantee if your pizza is not delivered within a specified time. And maybe—just maybe—those things are good. But the point is that they should not be decided by juries. They should be decided by people through their elected representatives, not by those juries in courtrooms where the rules of evidence are confining and, in so many instances, the real story is never told.

So who stands in the way of legal reform? Who will attack us over the next several weeks as this is introduced? Unfortunately, that great triumvirate of federalism—the plaintiffs' bar, the consumer groups led by Ralph Nader, and President Clinton. In a recent article in the Washington Times, Judge Robert Bork pointed out the fallacy of this newfound federalism argument that has been floated by the plaintiffs' lawyers. Our Framers valued local decisionmaking, and they wanted to avoid a centralized government that would control every aspect of our lives, but they also recognized that Federal regulation can be important.

One important factor that the Framers considered in drafting the Constitution was the need to have centralized control over commerce and trade. Alexander Hamilton, in Federalist No. 11, wrote about his concern that diverse and conflicting State regulations would be an impediment to American merchants. But today, we have a similar threat: Our unrestrained and unpredictable civil justice system.

Today, placing an article manufactured in Tennessee into the stream of commerce will be enough to subject a Tennessee merchant to suits in all 50 States. Aside from the obvious inconvenience, the laws of each of these States may, and in all likelihood will, be different from those laws in Tennessee—laws with which the merchant is familiar and which he may have used as a guideline in manufacturing and selling his product.

If we are going to allow the merchant to be hauled into court in any of the 50 jurisdictions in which this product may eventually be purchased, should we not try to provide some predictability, some centralized manner over the methods by which the dispute will be resolved? Should we not bring some predictability and some common sense to the issue? I think we should, and I think the federalism argument, in this case, is, at best, a red herring.

I fully anticipate that the President of the United States will oppose our legal reform efforts at every turn. But it will not be because he believes the effort is wrong or because he has suddenly found the 10th amendment. Instead, it will likely be because of his cozy relationship with the plaintiffs' trial bar. The American Trial Lawyers Association said in 1992 in a fundraising letter that President Clinton would, and I quote, ''never fail to do the right thing where we trial lawyers are concerned.'' And so far, they have been right, but it is time to change that.

The real victims of our failing justice system are the would-be plaintiffs, the victims themselves. The legislation which has been passed in the House and which will soon be discussed in this body will not prevent a plaintiff with a meritorious claim from suing and recovering. In fact, it will improve his or her chances. The courts will be clogged with fewer spurious lawsuits, and cases that now lag for 2, 3, or 4 years will move more quickly. Plaintiffs' lawyers will no longer be able to disregard reasonable settlement proposals and let cases sit for years. They will be required to evaluate the case in a timely manner and act in a manner that is in the best interest of their client. They will be less likely to simply roll the dice, hoping for the big hit.

The family which has suffered and which has medical expenses and lost wages and which really needs help is at the mercy of plaintiffs' lawyers who have plenty of cases and can afford to gamble. If they lose and they take nothing, they move on to the next case. But their clients have only 1 day in court.

Mr. President, legal reform will not hurt anyone, except perhaps the plaintiffs' trial lawyers, but they have had their way for too long. Simply put, it is time that we stop letting the tail wag the dog.

I look forward to these legal reform hearings, and I truly hope that we will enact meaningful reforms which will make our civil justice system more responsible, more accessible, more predictable and, most importantly, more equitable.

Thank you, Mr. President. I yield the floor.

REGISTRATION OF MASS MAILINGS

The filing date for 1995 first quarter mass mailings is April 25, 1995. If your office did no mass mailings during this period, please submit a form that states ''none.''