be denied access to care. We need a realistic, rational health care system that will prevent financially self interested groups from continuing to prey on unsuspecting medical consumers. We need a health care system that allows choice, provides accountability and incorporates a serious medical malpractice prevention program. As a victim of malpractice, I implore you . . . please do not let this administration strip away the rights of victims like me. Please let my HMO experience be your guide . . . Understand that managed care is part of our health care problem . . . It is not the solution.

[From the Milwaukee Journal, Sept. 15, 1993]

TORT REFORM ISN'T SOLUTION TO EASING HEALTH CARE WOES

(By Karin Smith)

The President's health care proposal is going to be released within the next few weeks. It is well known that tort reform will be included in his package. There is speculation that the proposed plan will limit pain-and-suffering awards for medical malpractice victims to $250,000. This would not only be unconstitutional, but grossly unfair.

Let me explain.

Five years ago, I was a healthy, 22-year-old woman. Today, I am a victim of both cervical cancer and medical mismanagement. In 1988, I belonged to Family Health Plan (FHP), a Milwaukee-based health maintenance organization. When I began to experience vaginal bleeding, I sought care from FHP.

Between June of 1988 and May of 1991, my symptoms gradually progressed from minor bleeding to profuse bleeding, to fatigue and passing out. During this time, I made nearly 20 calls to doctors within my HMO to complain of the problems. Also during this time, three Pap smears and three biopsies were performed.

Unfortunately, my cries for help were not heard, and all of my laboratory tests, with the exception of one Pap smear, were misread. When I left FHP in May of 1991 and sought the opinion of a gynecologist outside of that plan, my diagnosis was made within two weeks.

Since my diagnosis two years ago, I have undergone five surgeries, three separate two-month courses of radiation and six months of chemotherapy. I was recently informed that unless I have radical surgery this fall to remove a part of my spine and replace it with a piece of my rib, I will probably be paralyzed by spring.

Because of the three-year delay in diagnosis, my chance for cure has dropped from 95% to around 10%. Even if I am fortunate enough to survive this tragedy, I will be plagued with chronic health problems and a lifetime of uncertainty.

Few would disagree that this is an egregious case that has led to needless emotional and physical pain. Certain legislators and health care specialists believe that my non-economic damages should be limited to $250,000. The state Senate has passed a bill to that effect.

According to the Health Care Financing Administration, national health care expenditures total $675 billion. The American Medical Association says doctors pay $5.6 billion in medical insurance premiums. As an accountant, I can easily calculate the cost of malpractice premiums to be less than 1% of all health care expenditures. Even the Congressional Budget Office has said that changing the medical liability system will have little effect on total health spending.

Furthermore, several states have already placed caps on pain-and-suffering awards. History has shown this has not reduced malpractice premium expenses. The reality is that very few plaintiffs are awarded high amounts. In Wisconsin, almost 70% of claimants have received no payment at all, and only 85 claims have ever exceeded $200,000.

It is important to mention that our country could save an enormous amount of health care dollars by adopting a strict national policy for disciplining doctors.

In Wisconsin, between 1976 and 1988, the top 10 physician defendants accounted for 2.4% of the 2,904 claims filed and 23% of the total payments made. During this time, four physicians were involved in more than one claim over $400,000. The four physicians accounted for 17.8% of all losses paid in that year. Clearly, a small percentage of doctors is responsible for a large portion of claim dollars.

It is common perception that tort reform is strictly a battle between doctors and attorneys. What is painfully ignored is that victims are in the middle of this war. This is ironic, because these are the very people whom the tort system was designed to protect.

The issue of capping pain-and-suffering awards comes down to one question: Do we allow all citizens the right to a jury trial at which their peers decide a fair level of compensation for pain and suffering, based on the extent of the individual's damages and the facts?

If the answer is no, we are violating the constitutional rights of the most seriously injured victims, while protecting the careers of the most grossly negligent doctors.

Mr. FEINGOLD. I thank the Chair and I yield the floor.

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, I advise my colleagues that it is our hope to have an agreement here in the next few minutes. And if the agreement is reached, then there will be no more votes this evening and no votes on Monday. There will be a number of votes starting at 11 o'clock on Tuesday morning, maybe as many as four or five.

So I indicate to my colleagues that I do not believe there will be any more votes this evening. We will know for certain in matter of minutes.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, we have reached an agreement on the medical malpractice amendments. It has been cleared by the Democratic leader, Senator DASCHLE. I will now read the consent.

I ask unanimous consent that all amendments regarding medical malpractice only be in order for the duration of Thursday's session of the Senate and Monday's session of the Senate, except for one amendment each, which may be offered by the majority and minority leaders, or their designees.

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

Mr. DOLE. Mr. President, I further ask that any votes ordered on or in relation to the pending Thomas amendment, or on or in relation to the Wellstone amendment, and any other second-degree amendments that may be offered to the McConnell amendment occur in sequence at 11 a.m. on Tuesday, May 2, and that the final vote in sequence be on or in relation to the McConnell amendment No. 603, as amended, if amended.

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

Mr. DOLE. For the information of all Senators, this agreement means that any Senator who wishes to offer an amendment regarding medical malpractice must offer and debate that amendment today and/or Monday, and those votes will occur beginning at 11 a.m. on Tuesday, and thereafter medical malpractice amendments would no longer be in order to the bill except for an amendment that may be offered by each leader or their designee. I assume that would be the managers of the bill.

So having reached that agreement, I can announce there will be no more votes this evening. The Senate will not be in session tomorrow because both the Republicans and the Democrats have conferences tomorrow.

The Senate will come in at noon on Monday, be back on the bill on Monday. We may come in at 11 a.m. for morning business. There will be no votes on Monday, but we expect a lot of debate on Monday. And then rollcall votes will start at 11 a.m. on Tuesday.

Mr. GORTON. Mr. President, will the majority leader yield?

Will the Senate come in on Tuesday and have any time before 11 o'clock on Tuesday in which Members can speak to their amendments?

Mr. DOLE. I would be happy to make that arrangement. In other words, come in at 10:30 and speak for 5 minutes on amendments which we have already discussed. They can offer amendments on Monday.

Mr. GORTON. They can offer amendments on Monday. But I suggest to the leader that there be at least an hour before 11 o'clock for Members to summarize their amendments.

Mr. DOLE. We set aside the hour between 10 and 11 to discuss any of the amendments. We try to divide it up so everybody is treated fairly. We may come in at 9:30 for a half hour of morning business.

So there will be no more votes tonight. There will be no votes tomorrow, and no votes on Monday, except I assume there will be considerable debate on Monday. And then, as suggested by the Senator from Washington, Senator GORTON, there will be an hour set aside before the votes start for discussion of any of the amendments that may be offered.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SIMPSON. Mr. President, I want to speak briefly in opposition to the pending product liability reform legislation. I have not been vigorous in the debate to this point because there has been so much vigor expressed that I thought I would simply wait for a calmer moment.

Let me assure all that it gives me no pleasure at all to be in the position of opposition to many of my good Republican colleagues on this issue. But I have a number of concerns about this legislation—always have had about this type of legislation—which I will just review briefly which compel me to oppose this measure.

Mr. President, like many of my colleagues, I was a lawyer by trade—as was my father, as was my grandfather, his father before him, and my two sons now; 100 years of Simpsons practicing law in the State of Wyoming and, in fact, practicing law in the same community in the State of Wyoming, Park County and Cody, WY. And so I take great pride in my profession. When I graduated from the University of Wyoming law school, I believed that the profession was very reputable, indeed honorable, and that it meant something, something ennobling, to be a lawyer.

And, indeed, I think there are few professions outside of the law where one has the opportunity to directly rectify an inequity or injustice. And this is, I feel, the motivation for many of us who entered the profession.

I remember doing lots of pro bono work. I remember charging 35 bucks an hour. I remember doing these things. I was in everything from replevining a one-eyed mule to reorganizing railroads, as the guy said. So I took great pride in the profession.

I believe the legislation before us addresses a concern that is very real. There are, indeed—and sadly so—serious abuses and excesses within the practice of law—the profession I love—as there are in every other profession. And one thing that has clearly worsened the public perceptions of our profession is action by a seemingly ever-increasing number of greedy—and that is the word, greedy, avaricious—attorneys who have used the profession solely for their own gain and not for the public gain. Their sole purpose, at least in some that I have observed, is padding their own particular bank accounts.

Time and again I hear accounts of attorneys who have charged many hundreds of dollars for preparing a simple will when the only thing they did was spend 5 minutes cranking the client's name into a computer-generated form. And these abuses do indeed occur. And there are the attorneys, I am sure, who take the 3-hour lunches and play the 18 holes of golf every day and still manage to make a million bucks or more during the course of a year.

The point I make in citing those examples is to note that one motive for this legislation is to attack irresponsible, costly behavior by those who practice law. But I would argue that this legislation specifically chooses to weed out the results of such ethical transgressions rather than to correct their root causes in the irresponsible practice of law. It is for lawyers to clean up their own act and to weed from their profession those who soil it and belittle it.

Assuredly, irresponsibility may lie behind some of the large awards that are given out in product liability suits. But it does not necessarily follow that the solution is to limit punitive damages so as to affect even those which may be properly arrived at and properly computed.

Particular concerns I have about such an approach include the preemption of State tort law and excluding joint and several liability. The latter measure could conceivably eliminate the only recourse of many citizens against substantial harm to their health, at no real cost to the unscrupulous in the legal profession.

I believe one of the better results of the November 1994 elections has been to arrest the concentration of power in Washington, and to begin a correction of transferring some of it back to the beleaguered States and localities. And we have done some of that already. Partly for this reason, I oppose any federalizing of the major areas of tort law. This certainly would expand the scope of Federal Government activity by assuming 10th amendment powers that have been properly under the jurisdiction of the individual States for more than 200 years.

We must remember that federalization of tort law would, in my mind, severely limit the local citizenry's ability to influence tort law at the local or State legislative level. Greater proximity to the individual citizen would allow us to make certain that the laws adopted are those which best serve the local community's best interest.

Federalization also sends the message that we in Congress do not trust the average citizen sitting on a jury to render a fair and equitable award. I can assure you I certainly do not agree with every award about which I have read and studied. But I just do not believe that the solution lies in taking that power away from the citizenry and in having the Federal Government fix the boundaries.

I also believe that a statutory limitation on punitive damages will remove a very key motivating factor that now forces companies to design the safest products possible. I in no way imply that American companies as a rule seek to design unsafe products. That would be absurd. But I do believe it would be very poor policy to fix and to limit the cost of such irresponsibility right up front in a way that could maybe be planned around.

And by that I mean by limiting punitive damages and setting a figure could—could—result in company officials developing liability scenarios of what they expect to lose from such suits and to ring it up on the scorecard. A hypothetical, unscrupulous company could calculate: ''Well, if we make modification A here in the product, we project only 500 people a year will be injured, or some killed. That would still result in a 20 percent yearly profit margin, even after paying the maximum punitive damages for every one of these injuries or lost lives.''

Now, is that a pipe dream? I do not know. Possibly so. I do not know. But it is unseemly to me to facilitate the attachment of dollar values potentially to the cost of human lives.

As a general principle, I believe it is clear that more often than not prescribing local actions at the Federal level does not work—that ''one size fits all'' is not a practical approach.

Let us not, therefore, repeat the mistakes of other recent Congresses, and instead leave alone an area which is traditionally under the purview of the States.

So let us address the real root of the problem that is found in the legal profession itself—and there are plenty of them, and, I must say, they are grievous in many cases. But it is not in the legal system's infrastructure. It is in the legal profession itself. And the legal profession evolved as a means of protection for our citizens from its beginning.

I hear often the quote from Shakespeare, ''Kill all the lawyers.'' Well, there was a reason for that request and that admonition. And that was if they got the lawyers out of the way, they could get on with their nefarious conduct. You want to reread that one.

And that is an interesting part of that remarkable phrase in Shakespeare: Kill all the lawyers; because they could not get done what they intended to do if the lawyers had been there to protect.

So I just wanted to share those things. I am well aware of what is going to happen to lawyers in this session of the Legislature. I wish there were always the most pristine reasons for that, but one of the most vivid ones in a political body will be simply the fact that the trial lawyers of America

and affiliates gave $1,626,000 to those of the other faith in the 1994 election and only $101,000 to those of our faith, and they are looking for them, hunting them down.

So we have to be a little careful in that atmosphere, I would suggest. Not only did they bet on the wrong horse, they bet everything they had on all of the horses, and they all went backward down the track. That is a part of this that we want to keep in mind, that in the spirit of punishing the trial lawyers who showered forth their worldly goods upon those of the other faith, that we do not react in a way which is injurious to a profession that has protected us all. We all hate lawyers, except we love the one that represents us. Just like politicians, they have a lot of disgust for us, except for those who represent them.

So I want to share those views and indicate my opposition to the measure, which has been consistent throughout my time here. I thank the Chair.

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I ask unanimous consent to set aside the pending Wellstone amendment.

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

AMENDMENT NO. 608 TO AMENDMENT NO. 603

(Purpose: To limit the amount of punitive damages that may be awarded in a health care liability action)

Ms. SNOWE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes an amendment numbered 608.

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

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

The amendment is as follows:

On page 14, line 22, insert:

In section 15 of the amendment, strike subsection (e) and insert the following new subsection:

(e) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in a health care liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

Ms. SNOWE. Thank you, Mr. President. This legislation, unlike any other we have debated this year, touches each and every one of our daily lives. It touches our society as few bills do. In our homes. In our schoolrooms, In our work rooms. And in our hospital rooms.

There is a compelling case for product liability reform in this country, and this bill provides for a positive foundation on which we can build in the future. It may not be the end-all to the liability reform debate. And it is not a panacea to the legal labyrinth that millions of Americans have found themselves caught in at some time in their lives.

But it is a critical and long overdue first step in the process.

Mr. President, many Americans may ask a very simple question as we begin this debate, and that is this: In this time of downsizing Government and devolving power back to the States, why do we need Federal legislation on product liability?

It is a good question that merits a good answer.

The problem involves a vast patchwork of product liability laws in 50 States and the District of Columbia that send confusing and often conflicting signals to those who make, sell, or use products in the United States. Moreover, it is the uncertainty of this product liability system that creates unnecessary legal costs, impedes interstate commerce, and stifles innovation. And it unnecessarily places consumers—those we are trying to protect—at risk.

Despite recent product liability reforms in various States around the country, there is still an overriding and strong need for a protective, uniform, and all-encompassing Federal product liability law.

The problem with State product liability legislation—apart from the simple fact that different States have different rules—is that State legislation cannot capture or control the product liability problem outside its own borders.

Every suit filed and every judgment rendered has a potential impact on every other consumer in America by leading to possible changes in the product itself, increasing the item's price, and potentially affecting the price and availability of a wide range of other products. In extreme cases, manufacturers may even cease production of some products.

Even States in which product liability lawsuits are infrequent and judgments have been deemed appropriate are not immune from the impact of disparate State laws. I am proud to say that in my home State of Maine, it has been said that our jury verdicts have been reasonable and our judges fair. But the effect of the judgment in one State is shouldered by the consumers of that product in every other State. Therefore, the State of Maine residents pay a premium on every product they buy that has come in from outside the State of Maine—and on every product they buy from a local company that also distributes outside our State's borders.

The simple fact is that the residents of Maine are impacted by the product liability laws of every other State. And just as States cannot single-handedly address the problems caused by our spiraling national debt, they cannot address the national product liability problem. I have come to the conclusion that a Federal product liability law is the only mechanism to assure that a fair and uniform law will apply evenly throughout the United States.

I also recognize the role that uniformity plays in protecting the common good in certain circumstances. Civil rights laws and many environmental laws reflect the understanding that serving the common good may be best accomplished by maintaining similar standards across State borders. Not every issue affecting both States warrants a Federal standard, but some issues are pervasive enough—significant enough—that we cannot help but recognize the need for some level of agreement.

Mr. President, as a member of the Commerce Committee, I certainly have stressed the need for balance in this legislation and I offer my own personal check-list of the issues this legislation must address so that it is fair and equitable.

First, we must allow safe consumer products to be developed to meet consumer needs, and ensure that consumers can seek reasonable compensation when injuries and damages occur.

Second, the law must dissuade consumers from filing lawsuits frivolously, without discouraging Americans with substantive complaints from filing their own suit.

Third, a uniform law must encourage companies to police the safety of their own products, both by offering incentives for excellence in safety and strong punishment when product safety is breached.

Lastly, and perhaps most importantly, one of our fundamental goals must be to ensure this legislation protects the interests of the average American consumer who makes hefty use of products, but knows little of their innate safety or risk—much less their rights under the law.

Although I believe the call for product liability reform is justified, I certainly understand the concerns of those who testified before the committee regarding the potential discriminatory impact of this bill—particularly the dual standards created within the cap on punitive damages.

To understand the issue of a punitive damage cap, I think it is valuable to remember what punitive damages are—and are not. Punitive damages are punishment that serve an invaluable role in deterring quasi-criminal behavior by businesses. They have nothing to do with providing compensation to a person who has been harmed and are not intended in any way to make the plaintiff whole.

That purpose is served by compensatory damages, which provide recovery for both economic damages—which include lost wages and medical expenses—and noneconomic damages, which include pain and suffering and other losses.

However, I also understand the concerns of those who would contain runaway juries by capping punitive damages. One of the overriding problems in our current system is the absence of any consistent, meaningful standards for determining whether punitive damages should be awarded and—if so—in what amounts.

The absence of consistent standards not only leads to widely disparate and runaway punitive awards, but it also affects the settlement process. Individuals and companies that are used often face a catch-22: pay high legal fees to fight a case through trial, verdict, and appeal—or simply settle out of court for any amount less than these anticipated legal fees.

Even for the defendant who recognizes the cost of proving innocence to be too great, or simply hopes to avoid the lottery nature of a possible punitive award—seeking a settlement carries a hidden cost. The lack of a uniform national standard—or simply the existence of vague State standards—forces the defendant to include a punitive premium in their settlements, even when the likelihood of a punitive award is small or even nonexistent.

The high reversal rate of punitive damage awards underscores the absence of clear and understandable rules. Moreover, appealing the initial award is extremely costly and unnecessarily wasteful of both private and judicial resources. Although businesses and related entities pay the initial price of punitive awards, the impact of runaway awards is felt by consumers who pay higher prices in goods and services.

And health care is not different. Malpractice is an issue that should concern every American because it directly impacts the amount of money they pay for health care and their access to care. A 1993 Lewin-VHI study estimates that the combined cost of physician and hospital defensive medicine to be as high as $25 billion. And the 1994 Physician Payment Review Commission Annual Report to Congress noted a ''widespread concern that the current functioning of the malpractice system may promote the practice of defensive medicine and impeded efforts to improve the appropriateness and cost effectiveness of care.''

Access to quality care was an issue that received a great deal of attention—as well it should—over the last 2 years as Congress looked at ways to reform our health care system. The cost of malpractice has a direct impact on access to care, especially for women. A 1990 survey found that liability concerns caused 12 percent of doctors to give up their obstetrical practices, 24 percent to reduce their treatment of high-risk patients, and 10 percent to reduce their number of deliveries.

Concern has been expressed this afternoon during the debate that this is a matter that should be left up to the individual States. But the American taxpayers from Maine to Oregon have a direct stake in malpractice reform because the U.S. Government—in other words the American taxpayer—pays 32 percent of all the health care costs in this country. They are already paying a heavy price for the patchwork system of malpractice laws that currently exist and they deserve our best effort to provide a uniform standard that will help bring down the cost of health care and help ensure access to providers.

As we establish a cap, it is vital that we ensure the measure we choose is fair, uniform, acts as adequate punishment, and serves as an effective deterrent. I believe the amendment I have offered accomplishes all of these objectives.

I should mention that Senator GORTON, the primary sponsor of this legislation, has indicated that he will certainly support my amendment. And I thank the underlying sponsors, Senator MCCONNELL and Senator KASSEBAUM, for their support as well for this amendment.

My amendment is fair because it is blind to the socioeconomic position of the plaintiff. The current cap contained in the McConnell amendment would cap punitive damages at the greater of $250,000 or three times economic damages.

Economic damages—again—are the out-of-pocket expenses incurred by the plaintiff, such as their lost wages and medical expenses. Although this measure might serve as adequate punishment and act as an adequate deterrent in many cases, it relies too greatly on the economic position of the plaintiff in establishing a sufficient level of punishment.

I believe that all plaintiffs—regardless of their income—must be in a position to levy adequate punishment on those medical providers who have performed a particularly egregious act. We must not allow a medical provider to suffer only a slap on the wrist because his conduct harmed an individual of modest means.

As a very basic example, assume that two individuals—a truck driver with an annual income of $24,000 and one a corporate executive with an annual income of $1.2 million—suffer from similar medical malpractice injuries from two separate defendants and are each hospitalized for 1 month due to these injuries. Further assume that the medical expenses for these individuals are nearly identical at $100,000—an amount I am sure is far too low.

Under the three times economic damages formula, the potential punitive damage award—or punishment—that could be levied in the suit involving the millionaire would be up to approximately $600,000. This would be derived by adding the individual's lost income—$100,000—with his or her medical expenses—$100,000—and multiplying by three.

Conversely, the defendant in the lawsuit involving the truck driver could only be subjected to punitive damages of up to $306,000—or 51 percent that of the millionaire's defendant. This amount is derived by trebling the sum of the plaintiff's lost wages—$2,000—and medical expenses $100,000.

Although some would argue that the lower cap imposed in the suit involving the truck driver may serve as sufficient punishment, I believe it is fundamentally unfair. If the language of my amendment is adopted, the potential punitive award in the suit involving the truck driver will be far more in line with that of the millionaire. By including noneconomic damages—which are less tangible and include pain and suffering and the loss of one's eye, hand, or other faculty—the discriminatory effect of the cap will also be removed.

Continuing with the example already described, let us further assume that the jury award for noneconomic damages caused by the loss of one of the plaintiff's eyes is $500,000 for both the millionaire and the truck driver.

Using the two times compensatory measure, the possible punitive award would be $1.2 million for the millionaire and $1.004 million for the truck driver. In this way, the possible punitive award that could be imposed is nearly identical in both cases as the cap for the truck driver is 84 percent the size of the millionaire's cap.

Although hard statistics on this issue are difficult to find, the 1989 General Accounting Office report on product liability found that there was a strong correlation between the size of punitive awards and the size of compensatory damages. Excluding one extreme case in which compensatory damages far exceeded punitive damages, the punitive damages had a correlation of 0.71 with compensatory damages—which is just shy of a one-to-one ratio.

Although each of the five States contained in the study had varying levels of correlation, this average demonstrates that a reasonable cap based on compensatory damages can be drafted.

The Supreme Court has also expressed its concern with the manner in which punitive damages have been awarded—and lends credence to the argument in favor of a uniform cap. In the case of Pacific Mutual Life Insurance Company versus Haslip, the Supreme Court found that a four-to-one ratio of compensatory to punitive damages was ''close to the line'' of being unconstitutional, and expressed a strong concern that punitive damages in the United States have ''run wild.'' Similar sentiments were expressed in TXO Production Corp. versus Alliance Resources Corp., a case involving a commercial land dispute.

In both cases, Justices made clear that this was an area for reasonable and rational reform. Although no clear standard was identified, I believe the measure of two times compensatory damages would be deemed appropriate by the Supreme Court.

Finally, the American College of Trial Lawyers [ACTL]—a respected organization of experienced plaintiff and defense attorneys—recommended a cap based on a two times compensatory damages in their 1989 report on punitive damages.

The ACTL report also recommended that the two times compensatory damage cap be combined with a minimum cap of $250,000, but I do not believe such a measure is advisable or necessary. I believe a single measure—such as the measure contained in my amendment—is the most easily understood and ensures that all relevant cases are subject to the same standard. Multiple measures and standards imply that there is an imbalance in the formula being utilized.

I believe the measure of two times compensatory damages will work for everyone and will subject egregious offenders to strong punishment. This standard is fair and nondiscriminatory. It will apply to all litigants equally—whether you are a man or woman, wealthy or poor, a child or an adult.

Mr. President, if we have to include a cap on punitive damages in this legislation, we must ensure it is the best cap possible. So I ask my colleagues to join me in support of this amendment to the McConnell amendment today, and during further consideration of the underlying bill next week, because I do intend to offer this very same amendment to the underlying legislation as well.

I think the legislation, which is named the Product Liability Fairness Act, must live up to its name and therefore I think that my amendment will correct this discriminatory impact of punitive damages as it is currently drafted in this amendment as well as the underlying bill.

I believe my amendment is the best alternative available and I encourage my colleagues to support it.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I ask to speak in morning business and use part of my leader time to do so.

The PRESIDING OFFICER. The Senator has that right.

COUNTERTERRORISM INITIATIVE

Mr. DASCHLE. Mr. President, the day after the tragic bombing in Oklahoma City, when it became more evident that the terrorist attack was launched by Americans, President Clinton said he would seek prompt action on counterterrorism proposals he had already made, and promised to develop additional tools for Federal law enforcement to use.

Yesterday evening, the President hosted a meeting of the bipartisan congressional leadership to present his proposals and ask for timely, bipartisan consideration and enactment.

The President's proposals result from the well-considered experience of Federal law enforcement officials. They are designed to provide the additional legal authority Government needs to effectively combat terrorism, whether domestic or foreign.

These additional authorities will give Federal law enforcement agencies tools to combat terrorism more effectively without undermining or curtailing the constitutional rights of law-abiding American citizens.

Briefly, the proposal would extend the authority the FBI now has in national security cases to access credit reports and financial data for counterterrorism investigations.

The same standards as now apply in routine criminal cases would be used in counterterrorism cases for the orders that permit the FBI to use pen registers and trap-and-trace devices in investigations. These devices are not wiretaps; they simply capture phone numbers dialed, like a caller ID device that many people use in their own homes.

It would require hotel and motel operators and common carriers to provide records to the FBI for national security cases as they now routinely do for State and local law enforcement purposes.

It would fully fund the costs of implementing the digital telephony law, so that the ability of law enforcement to carry out court-authorized electronic surveillance would not be impeded by the shift to digital transmissions.

It would add 1,000 additional agents, prosecutors, and other personnel to increase the resources devoted to counterterrorism investigations, and establish an interagency counterterrorism center that would make sure the information and expertise of all Federal law enforcement agencies in this field are properly integrated in investigations.

It includes practical issues such as the requirement that chemical taggants be included in the raw materials from which explosive charges are created. This is essential to tracing the sources of such explosions as the one in Oklahoma City in the future.

Additionally, the proposal would enhance the penalties for crimes related to explosives, and directed against Federal employees. The proposal has been released by the White House, so all my colleagues have the opportunity to review these proposals in detail.

In addition, the President asked that we approve the Omnibus Counterterrorism Act of 1995, legislation which is primarily directed at foreign terrorists.

This package of proposals, along with the existing legislation, are carefully designed to give additional tools to law enforcement without weakening in any way the constitutional rights of any American.

The President has been particularly clear that we will fight against terrorists at home and abroad with all constitutional tools. Anything less would give the terrorists the victory over us that they seek: They would have destroyed the fundamental rule of law in our country.

As Americans, we all understand that we cannot and must not allow the cowardly attack on civilian Federal workers to incite us to such anger that we take shortcuts with American citizens' rights.

The President's proposals are sound, moderate, and effective. They reflect the advice of practical, hands-on law enforcement agents who have experience in this field. They deserve careful and thorough review by the Congress, and they deserve timely enactment.

It had been the President's hope, and mine as well, that on this matter, where there is truly broad agreement across partisan lines, the Congress could work in a bipartisan fashion to enact this package of security enhancements in the not too distant future.

I also hoped that we could have a bipartisan, narrowly tailored package of proposals that could be enacted without divisive debates over controversial issues of long standing.

I believe that the American people expect us to put partisanship and political advantage aside and respond with unity to the immediate and urgent needs of Federal law enforcement agencies.

Last night, at the meeting with the President, there was every indication that there would be a bipartisan, focused proposal on which Congress and the President could agree to move us forward in the effort to combat terrorism. Each of us in attendance pledged our support toward that end. Regrettably, today the majority leader introduced a bill that threatens to slow our progress and mire the Senate in divisive, partisan, rhetorical debate.

Americans know that we can and undoubtedly will debate matters such as habeus corpus reform later this year. We have debated the issue in virtually every Congress in the past decade. But that debate involves persons who are already incarcerated with no chance for parole and who no longer pose a threat to society.

I think this is a time when we should instead be concentrating on measures that will have an effect on those who may be planning an attack, and from whom we are not at all safe, as the bombing in Oklahoma City so dramatically proved last week.

I sincerely hope prompt action on these needed law enforcement tools will not be held hostage to political priorities. I believe Americans expect more of us. I know the Federal workers who lost their lives and their children certainly deserve that and more.