NLWJC - Kagan
DPC - Box 069 - Folder-010

Drafts [2]

THE WHITE HOUSE
WASHINGTON

Jeff-

I don't know anything about this lawsuit, nor do I think the President should comment directly on it. If you don't want to use a shortened version of the Isaac product liability letter, I would:

a) thank him for his letter

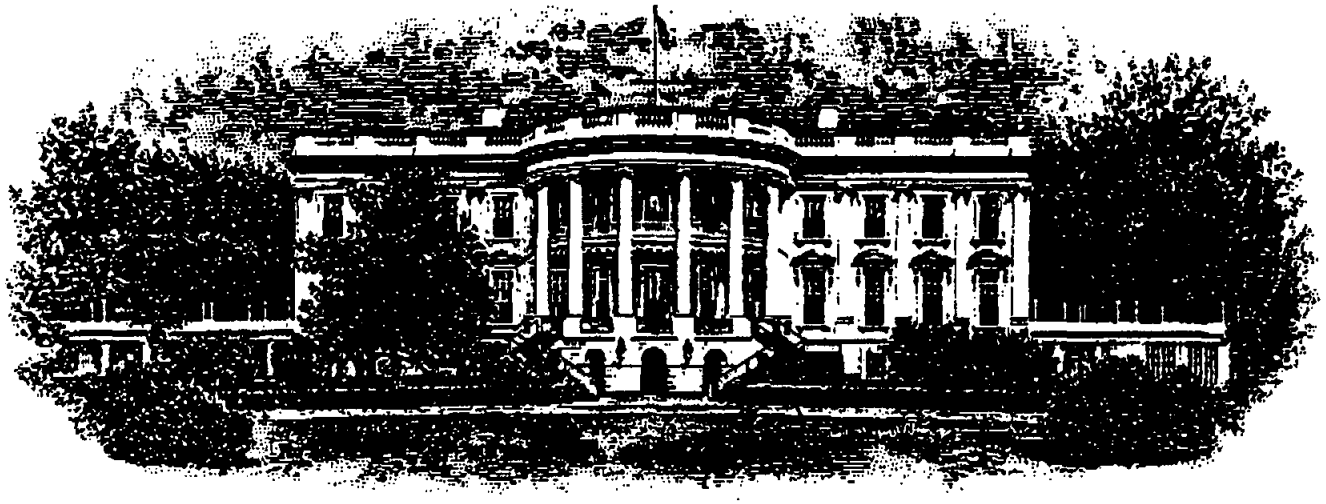
b) note that ~~the litigation~~ tort law plays an important role to play in ensuring the safety of products

c) state that though the President approves some reforms to such law, he vetoed the Product Liability Bill because it threatened safety by tilting the legal playing field against injured consumers. →

Let me see the letter when you're done, OK?

Elena

THE WHITE HOUSE
WASHINGTON



Facsimile from Jeff Dailey — Office of Presidential Letters

Phone: 202-456-5517 *Fax:* 202-456-5426

To: Elena Kagan

No. of pages (including cover) 4 *Date:* 7/10

Phone: _____ *Fax:* 61647

Comments: Ford motor recall letter. I left a detailed message on your voice mail. Please let me know how we can better respond to Mr. Jerach.

Thanks,

July 3, 1996

Mr. William S. Lerach
Milberg Weiss Bershad Hynes & Lerach
1800 One America Plaza
600 West Broadway
San Diego, California 92101

Dear Bill:

Thank you very much for your letter regarding the Product Liability Legal Reform Act of 1996. As you know, I vetoed this legislation on May 2, and I appreciate having your perspective on this issue.

I believe our legal system needs reform, and I have repeatedly urged Congress to pass limited, meaningful product liability measures. However, I vetoed the product liability bill Congress sent to me because I concluded that it unduly interfered with state authority and tilted the legal playing field against consumers.

I appreciate knowing your thoughts on this important issue, and, as always, I'm deeply grateful for your involvement.

Sincerely,

BC/JPD/JFB/jfc (Corres. #2942254)
(7.lerach.ws)

Xeroxed copy of personally signed original to NH through Todd Stern

CLEAR THRU TODD STERN

PRESIDENT TO SIGN

MILBERG WEISS BERSHAD HYNES & LERACH

MELVYN I. WEISS*
WILLIAM S. LERACH
DAVID J. BERSHAD*
PATRICIA M. HYNES*
SOL SCHREIBER*
JEROME M. CONGRESS*
KEITH F. PARK
SHARON LEVINE MIRSKY*
ROBERT P. SUGARMAN*
JOHN E. GRASBERGER
LEONARD B. SIMON
ARNOLD N. BRESSLER*
ALAN SCHULMAN
JAN M. ADLER
MICHAEL D. SPENCER*
ANITA MELEY LAING

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BARRY A. WEPRIN*
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RICHARD H. WEISS*
ERIC A. ISAACSON
ALAN M. MANSFIELD
LEE S. SHALOV*
JOHN J. STOIA, JR.
REED R. KATHREIN

OF COUNSEL
JARED SPECTHRIE
RICHARD M. MEYER*

LAWRENCE MILBERG (1913-1989)

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**ADMITTED IN PA

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JAMES R. BERGER*
JOY ANN BULL
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MITCH M. KALCHEIM*
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PETER A. LENNON**
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CARL J. MAYER*
C. BENJAMIN NUTLEY
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ALISON M. TATTERSALL
JOSHUA H. VINIK*
ERIN G. WARD
RANDI D. WEINBERGER
DEBORAH CLARK-WEINTRAUB*
JEFF S. WESTERMAN
PAUL D. YOUNG*

May 2, 1996

FEDERAL EXPRESS

Honorable William J. Clinton
THE WHITE HOUSE
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: Ford Motor Recall

Dear Mr. President:

Enclosed is The New York Times report of the massive Ford Motor recall of over 8 million vehicles with defective ignition switches. These defective ignition switches posed a serious safety hazard and have resulted in hundreds of vehicle fires.

I wanted you to know that Ford was forced to recall these vehicles as a result of a consumer class action lawsuit that I and a few other lawyers filed in federal court. On two occasions in the past, the federal agency overseeing automobile safety investigated this situation and took no action! It took a class action lawsuit by consumers and private lawyers to achieve the largest auto recall in history.

I commend you for your efforts to try to preserve the private litigation system in our country. The Ford recall case highlights how important that system is to the protection of American consumers.

Respectfully yours,

WILLIAM S. LERACH

WSL:kl
Enclosure

cc: Hon. Albert Gore, Jr.
Bruce Lindsey
Harold Ickes
w/Enclosure

P.S. Polls look GREAT - Hope to see you in Calif. soon.

Bill

Question 1

The President supports limited but meaningful liability reform at the federal level. Some federal action in this area is proper because no one state can alleviate nationwide problems in the tort system. Nonetheless, the States should have, as they always have had, primary responsibility for tort law. Moreover, any federal action in this area must adequately protect the interests of consumers, as well as those of manufacturers, service providers, and sellers. The President vetoed the recent product liability bill because it failed to meet these standards: it inappropriately intruded on state authority and did so in a way that tilted the legal playing field against consumers. In particular, the President

objected to provisions of the bill capping punitive damages in almost all circumstances and completely eliminating joint & liability for noneconomic damages. These provisions of the bill would have prevented some persons from receiving full compensation for injury and endangered the safety of the public. ~~The~~

The President would gladly sign a tort reform bill that does not have such problems -- that is both appropriately limited in scope and balanced in application. The President hopes that Congress will turn its attention to passing such a bill, ~~so that the~~ in order to alleviate those problems in the tort system that individual states cannot fix and that thus demand nationwide attention.

TO: Kathy Wallman
Elaine Kamarck
Shelley Fidler
Tom O'Donnell

Ouatta -
Please talk to Cheryl a fax this to her & ask her for help, advice...
KW

From: Ann Walker
X62428

RE: Questionnaire

Please review the attached and let me know your thoughts on whether/how we should respond. Need feedback ASAP.

Thx

Questions for the Candidates

The following five questions have been posed to both President Bill Clinton and Republican Presidential nominee, Sen. Robert Dole. The responses will be published in the August/September issue of *American Consulting Engineer* magazine.*

1. Liability reform, to include both product and services, is an issue closely followed by consulting engineers. Do you favor broad/comprehensive tort reform which includes the elimination of joint and several liability for the service sector?

2. During these times of government downsizing and budget cuts, many people are calling for a smaller government (i.e. decreasing the number of federal agencies and their work forces), while others claim that reducing the number of private contractors is more appropriate. Would you rather see a decrease in federal agencies and their work force or a decrease in the number of private sector contractors who work on federal contracts. Where do you stand on the PECG (Professional Engineers in California Government) ballot initiative in California that would require all state work to be done by state government agencies rather then contracting jobs out?

3. The environment is a topic which has an impact on everyone. Would you reauthorize the current Superfund as it is written now? Would you rather see a redraft of the Superfund Act so that it focuses on remediation? Or would you not have a Superfund at all? Where do you stand on EPA regulations as they relate to the environment?

4. Small businesses are often hard pressed for working capital and therefore turn to lending institutions to finance operations or cover shortfalls. What steps would you take to improve interest rates for all Americans?

5. The service sector's single largest expense is labor. Do you favor the reform of the Fair Labor Standards Act to provide greater flexibility for salary employees, and to remove U.S. Department of Labor and court liability exposure for certain management practices (as proposed by Sen. Nancy Kassebaum in S.1354 in the 103rd Congress)?

*The editors of *American Consulting Engineer* magazine reserve the right to edit the responses for space. Although every effort will be made to ensure the entire response is included, candidates should try to limit their individual question responses to about 100 words.

Thank you for your letter regarding the Product Liability Reform Act of 1996. I appreciate having your views on this important issue.

While I believe that our legal system needs reform, I vetoed the product liability bill because I concluded that it failed to adequately protect the interests of consumers, in addition to the interests of manufacturers and sellers.

In general, I objected to the bill's "one-way" preemption, imposing federal standards when state law is more favorable to consumers, but not when state law is more favorable to manufacturers or sellers. I also had concerns about specific provisions of the legislation that would impede the ability of injured persons to gain fair and adequate recovery. In particular, I objected to completely eliminating joint liability for noneconomic damages, placing arbitrary caps on punitive damages, restricting an injured person's right to sue after 15 years no matter what the useful life of the product is and limiting the rights of those injured because a person sells a product to high-risk customer, as when a gun dealer knowingly sells a gun to a convicted felon or a bar owner knowingly serves a drink to an obviously inebriated customer.

Congress could have passed limited, but balanced, product liability reform. If it had done so, I would have gladly signed it. I will continue to work with Congress to achieve this end.

Again, thank you for writing.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

17-May-1996 10:10am

TO: Elena Kagan

FROM: Jeff P. Dailey
Presidential Correspondence

SUBJECT: prod liability

Elena--
Will you please let me know if this response is sufficient for those who supported the President's veto of the product liability legislation?

thanks,
Jeff

Thank you for your letter regarding the Product Liability Reform Act of 1996. I appreciate having your perspective on this issue.

While I believe our legal system needs reform, I vetoed the product liability bill because I concluded that it failed to provide adequate protection to the interests of consumers, in addition to the interests of manufacturers and sellers.

Congress could have passed limited, but balanced product liability reform. If Congress had done so, I gladly would have signed the legislation. As I continue working with Congress to achieve this end, I appreciate knowing your thoughts.

###

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

17-May-1996 11:50am

TO: Elena Kagan

FROM: Jeff P. Dailey
Presidential Correspondence

SUBJECT: RE: prod liability

As far as I know, we never put any language on paper for those who support the President's veto. We did go into much greater detail for those who were against his veto. What's your advice on this?

thanks

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

20-May-1996 10:52am

TO: Bruce R. Lindsey

FROM: Elena Kagan
Office of the Counsel

SUBJECT: products letter

Bruce: I'm forwarding to you a message from the correspondence office, along with the letter that office proposes to send to people who have written in support of the President's veto of the products bill. I said that I thought we should send the same letter to people who support the veto as we are sending to people who oppose it. The correspondence office, however, thinks that the letter being sent to opponents is too detailed to send to supporters; the office thus proposes this shorter letter, which it views as "more responsive." Do you have a view?

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

17-May-1996 10:08am

TO: Elena Kagan

FROM: Jeff P. Dailey
Presidential Correspondence

SUBJECT: prod liability

Elena--
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thanks,
Jeff

Thank you for your letter regarding the Product Liability Reform Act of 1996. I appreciate having your perspective on this issue.

While I believe our legal system needs reform, I vetoed the product liability bill because I concluded that it failed to provide adequate protection to the interests of consumers, in addition to the interests of manufacturers and sellers.

Congress could have passed limited, but balanced product liability reform. If Congress had done so, I gladly would have signed the legislation. As I continue working with Congress to achieve this end, I appreciate knowing your thoughts.

###

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

21-May-1996 02:24pm

TO: Elena Kagan

FROM: Jeff P. Dailey
Presidential Correspondence

SUBJECT: prod liab

Elena--
Did you get a chance to ask Bruce L. about doing a general product liability letter to respond to those who support the President's veto?

thanks,
Jeff

DRAFT

To the House of Representatives:

I am returning without my approval H.R. 956, the so-called Common Sense Product Liability Legal Reform Act of 1996.

I support real "common sense product liability reform." To deserve that label, however, legislation must adequately protect the interests of consumers, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly. Congress, however, chose not to do so, deciding instead to retain provisions in the bill that I made clear I could not accept.

H.R. 956 inappropriately intrudes on state authority, and does so in a way that tilts the legal playing field against consumers. While some federal action in this area is proper because no one State can alleviate nationwide problems in the tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this job well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it defers to state law when that law is more helpful to manufacturers and sellers. I cannot accept, absent compelling reasons, such a one-way street of federalism.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families. Consumers should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, consumers should be able to get adequate compensation for their losses. Certain provisions in this bill work against these goals, preventing some injured persons from recovering the full measure of their damages and increasing the possibility that defective goods will come onto the market as a result of intentional misconduct.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm:

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages such as pain and suffering, because such a change would prevent many persons from receiving full compensation for injury. When one wrongdoer cannot pay its portion of the judgment, the other wrongdoers, and not the innocent victim, should have to shoulder that part of the award. Traditional law accomplishes this result. In contrast, this bill would leave the victim to bear these damages on his or her own. Given how often companies that manufacture defective

products go bankrupt, this provision has potentially large consequences.

This provision is all the more troubling because it unfairly discriminates against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of protection stand the least chance of receiving it.

Second, as I also have stated, I oppose arbitrary ceilings on punitive damages, because they endanger the safety of the public. Capping punitive damages undermines their very purpose, which is to punish and thereby deter egregious misconduct. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the most unusual cases.

In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the supply of materials needed to make life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited to non-negligent suppliers.

My opposition to these Senate-passed provisions were known prior to the Conference on the bill. But instead of addressing these issues, the Conference Committee took several steps backward, in the direction of the bill approved by the House.

First, the Conference Report seems to expand the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon or a bar owner who knowingly serves a drink to an obviously inebriated customer. I believe that such suits should go forward unhindered. Some in Congress have argued that the change made in Conference is technical in nature, so that the bill still exempts these actions. But I do not read the change in this way -- and in any event, I do not believe that a victim of a drunk driver should have to argue in court about this matter. Congress should not have made this last-minute change, creating this unfortunate ambiguity, in the scope of the bill.

In addition, the Conference Report makes certain changes that though sounding technical, may cut off a victim's ability to

sue a negligent manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the automatic stay that prevents suits from being filed during bankruptcy proceedings. The effect of this seemingly legalistic change will be that some persons harmed by companies that have entered bankruptcy proceedings (as makers of defective products often do) will lose any meaningful opportunity to bring valid claims.

Similarly, the Conference Report reduces the statute of repose to fifteen years (and less if states so provide), and applies the statute to a wider range of goods, including handguns. This change, which bars a suit against a maker of an older product even if that product has just caused injury, also will preclude some valid suits.

In recent weeks, I have heard from many victims of defective products, whose efforts to recover compensation this bill would have frustrated. I have heard from a woman who would not have received full compensatory damages under this bill for the death of a child because one wrongdoer could not pay his portion of the judgment. I have heard from women whose suits against makers of defective contraceptive devices -- and the punitive damages awarded in those suits -- forced the products off the market, in a way that this bill's cap on punitives would make much harder. I have heard from persons injured by products more than fifteen years old, who under this bill could not bring suit at all.

Injured people cannot be left to suffer in this fashion; furthermore, the few companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief to victims of harmful products and thereby endanger the health and safety of the entire American public. There is nothing "common sense" about such "reforms" to product liability law.

DRAFT

To the House of Representatives:

I am returning without my approval H.R. 956, the so-called Common Sense Product Liability Legal Reform Act of 1996.

I support real "common sense product liability reform." To deserve that label, however, legislation must adequately protect the interests of consumers, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly. Congress, however, chose not to do so, deciding instead to retain provisions in the bill that I made clear I could not accept.

H.R. 956 inappropriately intrudes on state authority, and does so in a way that tilts the legal playing field against consumers. While some federal action in this area is proper because no one State can alleviate nationwide problems in the tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this job well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it defers to state law when that law is more helpful to manufacturers and sellers. I cannot accept, absent compelling reasons, such a one-way street of federalism.

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In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm:

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products go bankrupt, this provision has potentially large consequences.

This provision is all the more troubling because it unfairly discriminates against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of protection stand the least chance of receiving it.

Second, as I also have stated, I oppose arbitrary ceilings on punitive damages, because they endanger the safety of the public. Capping punitive damages undermines their very purpose, which is to punish and thereby deter egregious misconduct. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the most unusual cases.

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In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the supply of materials needed to make life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited to non-negligent suppliers.

My opposition to these Senate-passed provisions were known prior to the Conference on the bill. But instead of addressing these issues, the Conference Committee took several steps backward, in the direction of the bill approved by the House.

First, the Conference Report seems to expand the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon or a bar owner who knowingly serves a drink to an obviously inebriated customer. I believe that such suits should go forward unhindered. Some in Congress have argued that the change made in Conference is technical in nature, so that the bill still exempts these actions. But I do not read the change in this way -- and in any event, I do not believe that a victim of a drunk driver should have to argue in court about this matter. Congress should not have made this last-minute change, creating this unfortunate ambiguity, in the scope of the bill.

In addition, the Conference Report makes certain changes that though sounding technical, may cut off a victim's ability to

sue a negligent manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the automatic stay that prevents suits from being filed during bankruptcy proceedings. The effect of this seemingly legalistic change will be that some persons harmed by companies that have entered bankruptcy proceedings (as makers of defective products often do) will lose any meaningful opportunity to bring valid claims.

Similarly, the Conference Report reduces the statute of repose to fifteen years (and less if states so provide), and applies the statute to a wider range of goods, including handguns. This change, which bars a suit against a maker of an older product even if that product has just caused injury, also will preclude some valid suits.

In recent weeks, I have heard from many victims of defective products, whose efforts to recover compensation this bill would have frustrated. I have heard from a woman who would not have received full compensatory damages under this bill for the death of a child because one wrongdoer could not pay his portion of the judgment. I have heard from women whose suits against makers of defective contraceptive devices -- and the punitive damages awarded in those suits -- forced the products off the market, in a way that this bill's cap on punitives would make much harder. I have heard from persons injured by products more than fifteen years old, who under this bill could not bring suit at all.

Injured people cannot be left to suffer in this fashion; furthermore, the few companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief to victims of harmful products and thereby endanger the health and safety of the entire American public. There is nothing "common sense" about such "reforms" to product liability law.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

01-May-1996 06:03pm

Peter + Ann -
Some edits are written here. Then see attached draft veto statement.
Thanks
Elena

TO: (See Below)

FROM: Ann M. Cattalini
Office of Legislative Affairs

SUBJECT: Products Briefing paper

May 1, 1996

VETO CEREMONY FOR THE PRODUCTS LIABILITY AND LEGAL REFORM ACT OF 1995

DATE: Thursday, May 2, 1996
LOCATION: Oval Office
TIME: 2:10pm to 2:25pm
FROM: John Hilley
Peter Jacoby

I. PURPOSE

This veto ceremony will provide an opportunity for you to reiterate your opposition to H.R. 956, the Common Sense Product Liability Legal Reform Act of 1995.

II. BACKGROUND

On March 13, 1996, a House-Senate conference committee completed its work on H.R. 956, the "Common Sense Product Liability Legal Reform Act of 1996." On March 21 the Senate passed the conference committee bill by a vote of 59-40. On March 29th the House approved the conference report by a vote of 259-158. On April 30th, Majority Leader Dole and Speaker Gingrich convened a press conference to finalize Congressional action on the bill and send it to the President's desk.

The conference report limits punitive damages in product

Although it allows judges to exceed these caps, the Statement of Managers makes clear that this is only to be done in the most unusual cases.

liability cases to two times compensatory damages or $250,000, whichever is greater, with lower limits for small businesses. ~~The measure also allows a plaintiff to bring a lawsuit up to two years after discovering both~~ the cause and ~~the injury itself.~~ The bill limits the time to file a suit to 15 years after the delivery of a product, ~~but the limit would only apply to certain products.~~ ~~Finally~~, the First, conference report would ~~also~~ abolish joint and several liability for non-economic damages.

Put this first - it is most important.

In addition,

You have supported products liability reform at the federal level but only if that reform: 1) respects the important role of the states in our federal system and; 2) fairly balances the interests of consumers with those of manufacturers and sellers. You have promised to veto H.R. 956 because it fails to ~~adequately~~ meet these two tests.

OK

As a general matter, tort law, including product liability law, is the responsibility and prerogative of the States, rather than of Congress. This is an area in which States have served as laboratories, testing and developing new ideas and making needed reforms. Proponents of new and sweeping Federal restrictions on State authority should bear the burden of persuasion. The Conference Report fails to show why the Federal Government should wrest this responsibility from the States. Certainly, this bill's findings -- which fail to recognize, for example, that the current increase in litigation is attributable to commercial suits between corporations rather than consumer-initiated product liability actions against the manufacturers and sellers -- do not justify such broad scale Federal intrusion.

see veto statement

Moreover, the Conference Report unfairly tilts the legal playing field to the disadvantage of consumers. Many provisions of H.R. 956, such as those dealing with punitive damages and the statute of repose, displace State law only when that law is more favorable to the consumer; when State law is more favorable to manufacturers and sellers, it remains in operation. This "one-way pre-emption" approach unfairly disadvantages consumers.

Additionally, several specific provisions of H.R. 956 would impede the ability of injured persons to gain fair and adequate recovery:

> An artificial ceiling on the amount of punitive damages that may be awarded in a product liability action. Statutory caps ignore the fundamental purpose of punitive awards: to punish and deter.
>
> The abolition of joint-and-several liability for noneconomic damages, most notably, pain and suffering.

This provision would severely and unfairly discriminate against those innocent victims whose injuries involve mostly noneconomic damages, rather than the sort of damages that can be measured by lost income.

Finally, H.R. 956 is the product of a bruising legislative battle which has seen the intensity of political rhetoric rise to new levels on both sides of the issue. Generally, with certain notable exceptions, Democrats on both sides of the Capitol have worked hard to defeat this legislation in the face of powerful business interests.

III. PARTICIPANTS

List of participants to be provided by Marilyn Yager, Office of Public Liaison.

IV. PRESS PLAN

Open press.

V. SEQUENCE OF EVENTS

You will meet briefly with the families of those affected by product liability litigation.

Following this meeting, you will proceed to the Oval Office and make a formal veto statement, flanked by these victims.

Following the statement, you will sign the letter of transmittal to the Congress formally vetoing this legislation.

VI. REMARKS

To be provided by Speechwriting.

Distribution:

TO: Elena Kagan
TO: Jennifer D. Dudley
TO: Marilyn Yager
TO: Timothy J. Keating
TO: Stacey L. Rubin
TO: Elisa M. Millsap

DRAFT

To the House of Representatives:

I am returning without my approval H.R. 956, the so-called Common Sense Product Liability Legal Reform Act of 1996.

I support real "common sense product liability reform." To deserve that label, however, legislation must adequately protect the interests of consumers harmed by defective products, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly. But Congress instead chose to pass legislation unfairly weighted against consumers and unduly infringing on the States, thus disserving the goal of real common sense reform.

H.R. 956 represents an unwarranted intrusion on state authority, in the interest of shielding manufacturers and sellers of harmful products. While some federal action in this area is appropriate because no single State can alleviate nationwide problems in our tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this responsibility well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers. I cannot accept a law that rejects state authority in the tort field in such a way as to tilt the legal playing field against consumers and in favor of manufacturers and sellers.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families. American families should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, American families should be able to get adequate compensation for their losses. Certain provisions in this bill work against these goals. These provisions could prevent even horribly injured persons from recovering the full measure of their damages. And these provisions would encourage the worst kind of conduct on the part of manufacturers and sellers, such as knowingly introducing injurious products into the stream of commerce.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm from defective products:

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages such as pain and suffering, because such a change would prevent many persons

from receiving full compensation for injury. When one wrongdoer goes bankrupt (as companies that manufacture or sell harmful products often do) or is otherwise unable to pay its portion of the judgment, the other wrongdoers, and not the innocent victim, should have to shoulder that part of the judgment. Traditional law accomplishes just this result. In contrast, this bill would relieve other wrongdoers of their obligation to pay the bankrupt or judgment-proof defendant's part of the noneconomic loss, thus leaving the victim to bear these damages on his or her own. So, for example, the victim of asbestos, a breast implant, or an intra-uterine device could have gone partly uncompensated under this bill, because in cases involving these products one wrongdoer was bankrupt and others would have had no obligation to pick up that wrongdoer's portion of the noneconomic harm.

What makes this provision all the more troubling is that it severely and unfairly discriminates against the most vulnerable members of our society. Because it applies to noneconomic, but not to economic damages, it most deeply cuts into the damage awards of people without large amounts of lost income. Thus, this provision disproportionately affects the elderly, the poor, children, and nonworking women. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of compensation stand the least chance of receiving it.

Second, as I also have stated, I oppose arbitrary ceilings on the amount of punitive damages that may be awarded in a product liability suit, because they endanger the safety of the consuming public. The purpose of punitive damages is to punish and deter egregious conduct, such as the deliberate manufacture and sale of defective products. Capping punitive damages increases the incentive to engage in such misconduct; it invites those companies willing to put economic gain above all else simply to weigh the costs of wrongdoing against potential profits. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the most unusual cases.

In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the continued supply of materials needed to manufacture life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited, as I hope and believe was Congress's intent, to non-negligent suppliers.

These defects alone would justify a veto, as I have stated before. But Congress, not content with a bad bill, enacted yet a worse one, by taking several steps back from the version passed in the Senate and toward the one approved by the House.

First, the Conference Report seems to expand the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon, who then uses it to shoot someone, or against a bar owner who knowingly serves a drink to an obviously inebriated customer, who then drives drunk and causes death or injury. I believe that lawsuits such as these should go forward unhindered. So too do such groups as Mothers Against Drunk Driving, Handgun Control, and the Coalition to Stop Gun Violence, a coalition of 44 organizations dedicated to the reduction of gun violence. Some in Congress have argued that the change made in Conference is technical in nature, so that the bill still exempts negligent entrustment actions. But I do not read the change in this way -- and in any event, I do not believe that a victim of a drunk driver should have to argue in court about this matter. Congress should not have made this last-minute change, creating this unfortunate ambiguity, in the scope of the bill.

In addition, the Conference Report makes certain changes that though sounding technical, may completely cut off a victim's ability to sue a guilty manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the "automatic stay" that prevents lawsuits from being filed during bankruptcy proceedings. The effect of this change will be that some persons injured by companies that have entered bankruptcy proceedings will lose any meaningful opportunity to bring valid claims. Given the frequency with which companies sued for manufacturing defective products go into bankruptcy -- think again of manufacturers of breast implants or asbestos or intra-uterine devices -- this seemingly legalistic change may have real consequence.

Similarly, the Conference Report reduces the statute of repose from twenty years to a maximum of fifteen years (and less if states so provide), and applies the statute to a much wider range of goods, including handguns. This change, which prevents a person from bringing suit against a manufacturer of an older product even if the product has just recently caused injury, also will preclude many meritorious lawsuits.

In recent weeks, I have heard from many victims of defective products, whose efforts to recover compensation for grievous harm this bill would have frustrated. I have heard, for example, from a couple who lost their daughter when a drunk driver crashed into as schoolbus, rupturing the bus's fuel tank and causing a fire that engulfed the vehicle and killed more than twenty children in it. Evidence at trial indicated that the fuel tank was defective -- and that the company knew it. In such a case, the bill's cap

on punitive damages could have come into play, decreasing the company's incentive to make a safe product. More dramatically, the bill's provision on joint liability would have prevented the parents from gaining full compensatory damages. The parents, in this two-defendant case, would not have received the portion of noneconomic damages attributable to the judgment-proof drunk driver. And because a child was involved, noneconomic damages would have formed the lion's share of the judgment. Thus, the parents' compensatory damage award under this bill would be a fraction of what current law in most states would give them.

I also have heard from women who suffered grievous bodily injury, including the loss of any ability to have children, from the insertion of defective intra-uterine devices. It was the award of punitive damages in cases brought by these women that forced companies to take these dangerous products off the market. This bill, by capping such awards, would have made this result far less likely. And this bill also might have affected the compensatory awards of such women, because in any case with a bankrupt or judgment-proof defendant, these women would have lost some share of their noneconomic damages -- including damages for the loss of their ability to have children.

And I have heard from many persons injured by products more than fifteen years old, which should have been safe to use for much longer than that. Whether the product is a defective tractor or garage door opener or elevator or gun, the statute of repose in this bill would apply to it, cutting off the ability of terribly injured persons to bring suit at all.

Injured people cannot be left to suffer in this fashion; more, the companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief to innocent victims of harmful products and thereby endanger the health and safety of the entire American public -- all in order to protect a handful of companies that make and market harmful products. There is nothing "common sense" about such "reforms" to the law of product liability.

To the House of Representatives:

I am returning without my approval H.R. 956, the so-called Common Sense Product Liability Legal Reform Act of 1996.

I support real "common sense product liability reform." To deserve that label, however, legislation must adequately protect the interests of consumers, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly. Congress, however, chose not to do so.

H.R. 956 inappropriately intrudes on state authority, and does so in a way that tilts the legal playing field against consumers. While some federal action in this area is proper because no one State can alleviate nationwide problems in the tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this job well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, the bill displaces state law only when that law is more favorable to consumers; it defers to state law when that law is more helpful to manufacturers and sellers. I cannot accept such a one-way street of federalism.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families. Consumers should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, consumers should be able to get adequate compensation for their losses. Certain provisions in this bill work against these goals, preventing some injured persons from recovering the full measure of their damages and undermining the deterrence of intentional misconduct, such as the knowing introduction of harmful products into the stream of commerce.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm:

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages such as pain and suffering, because such a change would prevent many persons from receiving full compensation for injury. When one wrongdoer cannot pay its portion of the judgment, the other wrongdoers, and not the innocent victim, should have to shoulder that part of the damage award. Traditional law accomplishes this result. In contrast, this bill would leave the victim to bear these damages on his or her own. Given how often companies that manufacture defective products go bankrupt, this provision has potentially

large consequences.

This provision is all the more troubling because it unfairly discriminates against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of protection stand the least chance of receiving it.

Second, as I also have stated, I oppose arbitrary ceilings on the amount of punitive damages that may be awarded in a product suit, because they endanger the safety of the public. Capping punitive damages undermines their very purpose, which is to punish and thereby deter egregious misconduct. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the most unusual cases.

In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the supply of materials needed to make life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited to non-negligent suppliers.

My opposition to these Senate-passed provisions were known prior to the Conference on the bill. But instead of addressing these issues, the Conference Committee took several steps back from the version passed in the Senate and toward the one approved by the House.

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Injured people cannot be left to suffer in this fashion; furthermore, the few companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief to victims of harmful products and thereby endanger the health and safety of the entire American public. There is nothing "common sense" about such "reforms" to product liability law.

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H.R. 956 represents an unwarranted intrusion on state authority, in the interest of shielding manufacturers and sellers of harmful products. While some federal action in this area is appropriate because no single State can alleviate nationwide problems in our tort system, the States should have, as they always have had, primary responsibility for tort law. The States traditionally have handled this responsibility well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers. I cannot accept a law that rejects state authority in the tort field in such a way as to tilt the legal playing field against consumers and in favor of manufacturers and sellers.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families. American families should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, American families should be able to get adequate compensation for their losses. Certain provisions in this bill work against these goals. These provisions could prevent even horribly injured persons from recovering the full measure of their damages. And these provisions would encourage the worst kind of conduct on the part of manufacturers and sellers, such as knowingly introducing injurious products into the stream of commerce.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm from defective products:

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages such as pain and suffering, because such a change would prevent many persons

from receiving full compensation for injury. When one wrongdoer goes bankrupt (as companies that manufacture or sell harmful products often do) or is otherwise unable to pay its portion of the judgment, the other wrongdoers, and not the innocent victim, should have to shoulder that part of the judgment. Traditional law accomplishes just this result. In contrast, this bill would relieve other wrongdoers of their obligation to pay the bankrupt or judgment-proof defendant's part of the noneconomic loss, thus leaving the victim to bear these damages on his or her own. So, for example, the victim of asbestos, a breast implant, or an intra-uterine device could have gone partly uncompensated under this bill, because in cases involving these products one wrongdoer was bankrupt and others would have had no obligation to pick up that wrongdoer's portion of the noneconomic harm.

What makes this provision all the more troubling is that it severely and unfairly discriminates against the most vulnerable members of our society. Because it applies to noneconomic, but not to economic damages, it most deeply cuts into the damage awards of people without large amounts of lost income. Thus, this provision disproportionately affects the elderly, the poor, children, and nonworking women. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of compensation stand the least chance of receiving it.

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I support real "common sense product liability reform", ~~at the Federal level~~ -- because I ~~know that~~ no single State, acting alone, can alleviate nationwide problems in our tort system. To deserve that label, however, legislation must adequately protect the interests of consumers harmed by defective products, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly; ~~were Congress to do so now, I would be~~ delighted. But Congress instead chose to pass legislation unfairly weighted against consumers and unduly infringing on the States, thus disserving the goal of real common sense reform.

H.R. 956 represents an ~~unwarranted~~ intrusion on state authority, in the interest of shielding manufacturers and sellers of harmful products. While some federal action in this area is appropriate, the States should have, as they have always had, primary responsibility for tort law. The States traditionally have handled this responsibility well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process in products cases; moreover, it does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers. I cannot accept a law that rejects state authority in the tort field in such a way as to tilt the legal playing field against consumers and in favor of manufacturers and sellers.

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Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers and their families. Consumers should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, consumers should be able to get adequate compensation for their losses. Certain provisions in this bill work against these goals, preventing some injured persons from recovering the full measure of their damages and ~~encouraging misconduct on the part of~~ manufacturers and sellers, ~~such as~~ knowingly introducing injurious products into the stream of commerce.

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large consequences.

This provision is all the more troubling because it unfairly discriminates against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of compensation stand the least chance of receiving it.

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Similarly, the Conference Report reduces the statute of repose from twenty years to fifteen years (and less if states so provide), and applies the statute to a wider range of goods, including handguns. This change, which bars a suit against a maker of an older product even if that product has just caused injury, also will preclude some valid suits.

In recent weeks, I have heard from many victims of defective products, whose efforts to recover compensation this bill would have frustrated. I have heard, for example, from a couple who lost their daughter when a drunk driver crashed into a schoolbus, rupturing the fuel tank and causing a fire that killed more than twenty children. Evidence at trial indicated that the fuel tank was defective -- and that the company knew it. In such a case, the bill's cap on punitive damages could have come into play, decreasing the company's incentive to make a safe product. More dramatically, the bill's provision on joint liability would have prevented the parents from gaining full compensatory damages. The parents would not have received the portion of noneconomic damages attributable to the judgment-proof drunk driver. And because a child was involved, noneconomic damages would have formed the lion's share of the judgment.

I also have heard from women who suffered grave injury, including the loss of reproductive ability, from the insertion of defective intra-uterine devices. The award of punitive damages in these cases forced companies to take these dangerous products off the market. This bill, by capping such awards, would have made this result far less likely. Moreover, this bill might have affected the compensatory awards of such women, because in any case with a bankrupt or judgment-proof defendant, these women would have lost some share of their noneconomic damages -- including damages for their reproductive capacity.

And I have heard from many persons injured by products more than fifteen years old, which should have been safe to use for a longer time. Whether the product is a defective tractor, elevator, or gun, the statute of repose in this bill would apply, cutting off the ability of injured persons to bring suit at all.

Injured people cannot be left to suffer in this fashion; more, the few companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief

sue a guilty manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the automatic stay that prevents suits from being filed during bankruptcy proceedings. The effect of this seemingly legalistic change will be that some persons harmed by companies that have entered bankruptcy proceedings (as makers of defective products often do) will lose any meaningful opportunity to bring valid claims.

Similarly, the Conference Report reduces the statute of repose from twenty years to fifteen years (and less if states so provide), and applies the statute to a wider range of goods, including handguns. This change, which bars a suit against a maker of an older product even if that product has just caused injury, also will preclude some valid suits.

In recent weeks, I have heard from many victims of defective products, whose efforts to recover compensation this bill would have frustrated. I have heard from a woman who would not have received full compensatory damages under this bill for the death of a child because one wrongdoer could not pay his portion of the judgment. I have heard from women whose suits against makers of defective intra-uterine devices -- and the punitive damages awarded in those suits -- forced the products off the market, in a way that would be made much harder by this bill's cap on punitive damages. And I have heard from persons injured by products more than fifteen years old, who under this bill's statute of repose could not bring suit at all.

Injured people cannot be left to suffer in this fashion; ~~more~~ furthermore, the few companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. The bill would undermine the ability of courts to provide relief to victims of harmful products and thereby endanger the health and safety of the entire American public. There is nothing "common sense" about such "reforms" to product liability law.

DRAFT

To the House of Representatives:

I am returning without my approval H.R. 956, the so-called Common Sense Product Liability Legal Reform Act of 1996.

I support real common sense product liability reform at the Federal level. To deserve this label, however, legislation must adequately protect the interests of consumers harmed by defective products, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly; were Congress to do so now, I would be delighted. But Congress instead chose to pass legislation unfairly weighted against consumers and unduly infringing on the States, thus disserving the goal of real common sense reform.

H.R. 956 represents an unwarranted intrusion on state authority, in the interest of shielding manufacturers and sellers of harmful products. Tort law traditionally has been a matter for the States, rather than for Congress. The States have handled this responsibility well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process -- and does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers. I cannot accept a law that rejects state authority in the tort field so as to tilt the legal playing field against consumers and in favor of manufacturers and sellers.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers. These provisions could prevent even horribly injured persons from recovering the full measure of their damages. And these provisions would encourage the worst kind of conduct on the part of manufacturers and sellers, such as knowingly introducing injurious products into the stream of commerce.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm from defective products:

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages (most notably, pain and suffering), because such a change would prevent many persons from receiving full compensation for injury. When one wrongdoer goes bankrupt -- as companies that sell or manufacture harmful products often do -- the other wrongdoers, and not the innocent victim, should have to shoulder its part of the judgment. Traditional law accomplishes just this result. In contrast, this bill would relieve other wrongdoers of their

obligation to pay the bankrupt company's part of the noneconomic loss, thus leaving the victim to bear these damages on her own. So, for example, the victim of asbestos, a breast implant, or an intra-uterine device would have gone partly uncompensated under this bill, because in cases involving these products one wrongdoer was bankrupt and others would have had no obligation to pick up the bankrupt company's portion of the victim's noneconomic harm.

What makes this provision all the more troubling is that it severely and unfairly discriminates against the most vulnerable members of our society. Because it applies to noneconomic, but not to economic damages, it most deeply cuts into the damage awards of people without large amounts of lost income. Thus, this provision disproportionately affects the elderly, the poor, and nonworking women. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of compensation stand the least chance of receiving it.

Second, as I also have stated, I oppose arbitrary ceilings on the amount of punitive damages that may be awarded in a product liability suit, because they endanger the safety of the consuming public. The purpose of punitive damages is to punish and deter egregious conduct, such as the deliberate manufacture and sale of defective products. Capping punitive damages increases the incentive to engage in such misconduct; it invites those companies willing to put economic gain above all else simply to weigh the costs of wrongdoing against potential profits. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the rarest of circumstances.

In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the continued supply of materials needed to manufacture life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited, as I hope and believe was Congress's intent, to non-negligent suppliers.

These defects alone would justify a veto, as I have stated before. But Congress, not content with a bad bill, enacted yet a worse bill, by taking several steps back from the version passed in the Senate and toward the one approved by the House.

First, the Conference Report expands the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon, who then uses it to shoot someone, or against a bar owner who knowingly serves a drink to an obviously inebriated customer, who then drives drunk and causes death or injury. I believe that lawsuits such as these should go forward unhindered. So too do such groups as Mothers Against Drunk Driving and the Coalition to Stop Gun Violence, a coalition of 44 organizations dedicated to the reduction of gun violence. Congress should not have made this last-minute change in the scope of the bill.

In addition, the Conference Report makes certain changes that though sounding technical, may completely cut off a victim's ability to sue a guilty manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the "automatic stay" that prevents lawsuits from being filed during bankruptcy proceedings. The effect of this change will be that some persons injured by companies that have entered bankruptcy proceedings will lose any meaningful opportunity to bring valid claims. Given the frequency with which companies sued for manufacturing defective products go into bankruptcy -- think again of manufacturers of breast implants or asbestos or intra-uterine devices -- this seemingly legalistic change may have dramatic consequences.

Similarly, the Conference Report reduces the statute of repose from twenty years to a maximum of fifteen years (and less if states so provide), and applies the statute to a much wider range of goods, including handguns. This change, which prevents a person from bringing suit against a manufacturer of an older product even if the product has just recently caused injury, also will preclude many meritorious lawsuits.

Consider two hypothetical cases, as a demonstration of how these provisions operate in combination to prevent injured people from receiving the compensation to which they are entitled.

In the first, the mother of a boy killed in a driveby shooting sues the gun dealer who knowingly sold a handgun to a person formerly convicted of a crime of violence. Under current law in most states, the dealer (assuming, as is commonly true, that the shooter himself has no money) would pay damages equal to all the mother's economic and noneconomic damages, regardless of how these damages were allocated as between the dealer's and the shooter's misconduct; perhaps the dealer also would pay punitive damages for the egregious nature of his act. Under this bill, by contrast, the mother would have less chance of receiving an award of punitive damages sufficient to deter future misconduct. Still worse, she would receive no damages for any of her noneconomic loss, including pain and suffering, that the jury attributed to the shooter. Because the majority of her damages would arise from pain and suffering (not economic injury) and because the

jury would have allocated a substantial part of this amount to the judgment-proof shooter, her total damage award would be a fraction of what current law would give her. And if the gun causing the injury were an old model, thus triggering the statute of repose, the mother would receive no damages whatsoever.

In the second case, a woman suffering severe injury from a breast implant sues both the manufacturer of the implant and the supplier of its silicone gel, both of whom knew that the product could cause injury. Under current law, both wrongdoers would be liable for the harm the woman suffered; more, if one wrongdoer could not pay its portion of the judgment, the other would make up the difference. But this would not be true under H.R. 956. If this bill were enacted, even the best case scenario would be appalling: the supplier, though knowing its product posed danger, would be immune from suit, and the portion of noneconomic (pain and suffering) damages allocated to it would be lost to the woman. In addition, the manufacturer, no matter how intentional its decision to implant a harmful product, might benefit from the bill's cap on punitive damages. But there would be a worse case scenario, which very well could happen. If the manufacturer of the implant entered bankruptcy, no defendant would be left to pay the woman's damages, let alone to make a punitive award deterring future misconduct. One wrongdoer would have immunity, the other insufficient resources; as a result, the innocent injured woman would bear the full cost of the harm. In short, a woman who under current law would receive full compensation and perhaps punitive damages, under H.R. 956 would get absolutely nothing.

This example, indeed, is more than a hypothetical. There are identifiable injured women today facing situations that are substantially similar to the one I have just described. Their prospects of recovering anything at all for the harm caused by ruptured implants would decrease dramatically if H.R. 956 became law.

I cannot believe that even the supporters of the Conference Report would sanction these results. Real people with real injuries cannot be left to suffer in this fashion; more, the companies that cause these injuries cannot be left, through lack of a deterrent, to engage in misconduct. I therefore must return the bill that has been presented to me. There is nothing "common sense" about its "reforms" to the law of product liability.

DRAFT Presidential Response for Product Liability Legislation

Thank you for your letter regarding H.R. 956, the Product Liability Legal Reform Act of 1996. I will veto this legislation when it is presented to me.

This bill represents an unwarranted intrusion on traditional state authority in the interest of protecting manufacturers and sellers of harmful products. As a rule, this bill displaces state law only when that law is more favorable to the consumer; when state law is more favorable to manufacturers and sellers, it remains in operation. I cannot accept a law that rejects state authority only to tilt the legal playing field to the disadvantage of consumers.

In addition, specific provisions of the bill unfairly affect consumers, preventing some injured persons from gaining adequate recovery. For those irresponsible companies willing to put profits above all else, the bill's capping of punitive damages increases the incentive to engage in the misconduct of knowingly manufacturing and selling defective products. The provision of the bill allowing judges to exceed the cap in certain circumstances does not cure this problem because of Congress's clear intent that judges should do so only in very rare circumstances. Moreover, the bill's elimination of joint liability for non-economic damages will mean that innocent victims will suffer when one wrongdoer goes out of business and cannot pay its portion of the judgement.

I support the enactment of limited product liability reform which fairly balances the interests of consumers with those of manufacturers and sellers. The current bill fails to meet these standards. As we seek to develop more thoughtful and balanced reforms to the American legal system, I appreciate knowing your views.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-Apr-1996 10:58am

TO: Jennifer D. Dudley

FROM: Jeff P. Dailey
Presidential Correspondence

SUBJECT: draft of product liability letter

Jennifer,
Will you please have Mr. Lindsey take a look at my draft of the product liability letter? The President has received quite a bit of mail from CEOs and lawyers on this topic. Here it is:

Thank you for your letter regarding H.R. 956, the Product Liability Legal Reform Act of 1996. I will veto this legislation ~~if~~ when it is presented to me ~~in its current form~~.

This bill represents an unwarranted intrusion on traditional state authority in the interest of protecting manufacturers and sellers of ~~defective~~ harmful products. ~~Many provisions of H.R. 956, such as those dealing with punitive damages and the statute of repose,~~ As a rule, this bill displaces state law only when that law is more favorable to the consumer; ~~however,~~ when state law is more favorable to manufacturers and sellers, it remains in operation. ~~These provisions, along with others that would impede the ability of injured persons to gain fair and adequate recovery, unfairly~~ I cannot accept a law that rejects state authority so as to tilt the legal playing field to the disadvantage of consumers.

In addition, ~~for~~ specific provisions of the bill unfairly affect consumers, preventing even totally some injured persons from gaining adequate recovery. those irresponsible companies willing to put profits above all else, the bill's capping of punitive damages increases the incentive to engage in the misconduct of knowingly manufacturing and selling defective products. The provision of the bill allowing judges to exceed the cap in certain circumstances does not cure this problem; ~~it is the~~ clear intent ~~of this legislation's crafters~~ because of Congress's that judges should do so only in ~~the~~ very rarest ~~of~~ circumstances.

~~My Administration~~ supports the enactment of limited, ~~meaningful~~ product liability reform. ~~Any final legislation should~~ fairly balance the interests of ~~all~~ consumers ~~and citizens~~ with those of manufacturers and sellers. As we seek to develop thoughtful and balanced reforms to the American legal system, I appreciate knowing your views.

###

Thank you so much for your help!

Moreover, ~~In addition,~~ the bill's elimination of joint liability for non-economic damages will mean that innocent victims will suffer when one wrongdoer goes out of business and cannot pay its portion of the judgment.

The current bill fails to meet these standards.

DRAFT

STATEMENT ON PRODUCTS LIABILITY

The Product Liability Act that Congress has sent to the President goes too far: it protects the interests of manufacturers, but at the unnecessary and unfair expense of consumers and their families. Product liability reform is a worthy objective, but American families still should be able to count on the safety of the products they purchase. And if these products are defective and cause harm, American families still should be able to get adequate compensation for their losses. The Act sent to the President simply does not strike this balance. It would undermine the ability of the courts to provide relief to innocent victims of harmful products and thereby endanger the health and safety of the entire American public -- all in order to protect a handful of companies that make and market harmful products.

The President has supported limited and balanced product liability reform. If Congress gave him a bill that was fair to the men and women who rely on the safety of manufactured products, he would sign that bill in an instant. But the President cannot sign the bill that Congress has sent to him. He cannot sign the bill because of the total elimination of joint liability for noneconomic damages, which would prevent many injured victims of harmful products from receiving the full measure of their damages. He cannot sign the bill because of the strongly presumptive cap placed on punitive damages, which would encourage companies to engage in the egregious misconduct of knowingly manufacturing and selling harmful products. He cannot sign the bill because of a host of seemingly technical provisions, some slipped in at the last minute, which together would prevent some good claims from being brought. In short, the President cannot sign this bill because it is unfair to American families and rewards the interests that profit from their misfortune.

goes too far: it protects the interests of manufacturers, but at the unnecessary and unfair expense of customers and their families. Product liability reform is a worthy objective, but American families still

STATEMENT ON PRODUCTS LIABILITY

The Product Liability Act that Congress has sent to the President ~~protects the interests of the most irresponsible special interests at the expense of the American families that buy and consume their products~~. ~~These~~ families should be able to expect that the products they buy will be safe ~~and effective~~. And these families should be able to get adequate compensation when a product ~~is~~ defective ~~and~~ causes harm. The Act sent to the President today ~~stands against these values~~. ~~The Act~~ would undermine the ability of the courts to provide relief to innocent victims of harmful products and thereby endanger the health and safety of the entire American public -- all in order to ~~place a few more dollars in the pockets of companies~~ that make and market harmful products.

The President has supported limited and balanced product liability reform. If Congress gave him a bill that was fair to the men and women who rely on the safety of manufactured products, he would sign that bill in an instant. But the President cannot sign the bill that Congress today sent to him. He cannot sign the bill because of the presumptive cap placed on punitive damages, which would encourage companies to engage in the egregious misconduct of knowingly manufacturing and selling harmful products. He cannot sign the bill because of the total elimination of joint liability for noneconomic damages, which would prevent many injured victims of harmful products from receiving the full measure of their damages. He cannot sign the bill because of a host of seemingly technical provisions, some slipped in at the last minute, which together would prevent some good claims from being brought. In short, the President cannot sign this bill because it ~~sells out~~ American families and rewards the ~~special~~ interests that profit from their misfortune.

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strongly

If they are not safe, then

strongly doesn't strike this balance. It

Jack —

I was told by Vicki that George wanted a 2-paragraph statement, for his use & yours, slamming the products bill on grounds of "special interests vs. families." Here's a stab. Let me know. Ellen

Elena: let's discuss further
Thanks - JQ 6/12/96

DRAFT

Veto Message for H.R. 956

I am returning without my approval H.R. 956, the so-called Common Sense Product Liability Legal Reform Act of 1996.

I support real common sense product liability reform at the Federal level. To deserve this label, however, legislation must adequately protect the interests of consumers harmed by defective products, in addition to the interests of manufacturers and sellers. Further, legislation must respect the important role of the States in our Federal system. Congress could have passed legislation, appropriately limited in scope and balanced in application, meeting these tests. Had Congress done so, I would have signed the bill gladly; were Congress to do so now, I would be delighted. But Congress instead chose to pass legislation weighted against consumers and infringing on the States, thus disserving the goal of real common sense reform.

The Conference Report on H.R. 956 represents an unwarranted intrusion on state authority, in the interest of shielding manufacturers and sellers of harmful products. Tort law traditionally has been a matter for the States, rather than for Congress. The States have handled this responsibility well, serving as laboratories for new ideas and making needed reforms. This bill unduly interferes with that process -- and does so in a way that peculiarly disadvantages consumers. As a rule, this bill displaces state law only when that law is more favorable to consumers; it allows state law to remain in effect when that law is more helpful to manufacturers and sellers. I cannot accept a law that rejects state authority in the tort field solely in the interest of tilting the legal playing field against consumers and in favor of manufacturers and sellers.

Apart from the general structure of the bill, specific provisions of H.R. 956 unfairly disadvantage consumers. These provisions would prevent even horribly injured persons -- including some who may be elderly, poor, or non-working women -- from recovering the full measure of their damages. And these provisions would encourage the worst kind of conduct on the part of manufacturers and sellers, such as knowingly introducing injurious products into the stream of commerce.

In particular, I object to the following provisions of the bill, which subject consumers to too great a risk of harm from defective products:

First, as noted in the Statement of Administration Policy on the Senate version of this bill, I oppose wholly eliminating joint liability for noneconomic damages (most notably, pain and suffering), because such a change would prevent many persons from receiving full compensation for injury. When one wrongdoer goes bankrupt -- as companies that sell or manufacture harmful products often do -- the other wrongdoers, and not the innocent victim, should have to shoulder its part of the judgment.

Traditional law accomplishes just this result. In contrast, this bill would relieve other wrongdoers of their obligation to pay the bankrupt company's part of the noneconomic loss, thus leaving the victim to bear these damages on her own. So, for example, the victim of asbestos, a breast implant, or an intra-uterine device would have gone partly uncompensated under this bill, because in cases involving these products one wrongdoer was bankrupt and others would have had no obligation to pick up the bankrupt company's portion of the victim's noneconomic harm.

What makes this provision all the more troubling is that it severely and unfairly discriminates against the most vulnerable members of our society. Because it applies to noneconomic, but not to economic damages, it most deeply cuts into the damage awards of people without large amounts of lost income. Thus, this provision disproportionately affects the elderly, the poor, and nonworking women. There is no reason for this kind of discrimination. Noneconomic damages are as real and as important to victims as economic damages. We should not create a tort system in which people with the greatest need of compensation stand the least chance of receiving it.

Second, as also noted in the Statement of Administration Policy on the Senate version, I oppose arbitrary ceilings on the amount of punitive damages that may be awarded in a product liability suit, because they endanger the safety of the consuming public. The purpose of punitive damages is to punish and deter egregious conduct, such as the deliberate manufacture and sale of defective products. Capping punitive damages increases the incentive to engage in such misconduct; it invites those companies willing to put economic gain above all else simply to weigh the costs of wrongdoing against potential profits. The provision of the bill allowing judges to exceed the cap if certain factors are present helps to mitigate, but does not cure this problem, given the clear intent of Congress, as expressed in the Statement of Managers, that judges should use this authority only in the rarest of circumstances.

In addition, I am concerned that the Conference Report fails to fix an oversight in Title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, Title II is a laudable attempt to ensure the continued supply of materials needed to manufacture life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited, as I hope and believe was Congress's intent, to non-negligent suppliers.

These defects alone would justify a veto, as I have stated before. But Congress, not content with a bad bill, enacted yet a worse bill, by taking several steps back from the version passed

in the Senate and toward the one approved by the House.

Most critically, the Conference Reports expands the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to negligent entrustment actions -- lawsuits, for example, against a gun dealer who knowingly sells a gun to a convicted felon, who then uses it to shoot someone, or against a bar owner who knowingly serves a drink to an obviously inebriated customer, who then drives drunk and causes death or injury. I believe that lawsuits such as these should go forward unhindered. So too do such groups as Mothers Against Drunk Driving and the Coalition to Stop Gun Violence, a coalition of 44 organizations dedicated to the reduction of gun violence. Congress was simply getting greedy when, at the last minute and for no reason, it included lawsuits of this kind within the scope of the bill.

In addition, the Conference Report makes certain changes that though sounding technical, may completely cut off a victim's ability to sue a guilty manufacturer. The Report deletes a provision that would have stopped the statute of limitations from running when a bankruptcy court issues the "automatic stay" that prevents lawsuits from being filed during bankruptcy proceedings. The effect of this change will be that some persons injured by companies that have entered bankruptcy proceedings will lose any meaningful opportunity to bring valid claims. Given the frequency with which companies sued for manufacturing defective products go into bankruptcy -- think again of manufacturers of breast implants or asbestos or intra-uterine devices -- this seemingly legalistic change may have dramatic consequences.

Similarly, the Conference Report reduces the statute of repose from twenty years to a maximum of fifteen years (and less if states so provide), and applies the statute to a much wider range of goods, including handguns. This change, which prevents a person from bringing suit against a manufacturer of an older product even if the product has just recently caused injury, also will preclude many meritorious lawsuits.

Consider two hypothetical cases, as a demonstration of how these provisions operate in combination to prevent injured people from receiving the compensation to which they are entitled.

In the first, the mother of a boy killed in a driveby shooting sues the gun dealer who knowingly sold a handgun to a person formerly convicted of a crime of violence. Under current law in most states, the dealer (assuming, as is commonly true, that the shooter himself has no money) would pay damages equal to all the mother's economic and noneconomic damages, regardless of how these damages were allocated as between the dealer's and the shooter's misconduct; perhaps the dealer also would pay punitive damages for the egregious nature of his act. Under this bill, by contrast, the mother would have less chance of receiving an award of punitive damages sufficient to deter future misconduct. Still worse, she would receive no damages for any of her noneconomic

loss, including pain and suffering, that the jury attributed to the shooter. Given that the majority of her damages would arise from pain and suffering (not economic injury) and that the jury would have allocated some substantial part of this amount to the judgment-proof shooter, her total damage award would be but a fraction of what current law would give her. And if the gun causing the injury were an old model, thus triggering the statute of repose, the mother would receive no damages whatsoever.

In the second case, a woman suffering severe injury from a breast implant sues both the manufacturer of the implant and the supplier of its silicone gel, both of whom knew that the product could cause injury. Under current law, both wrongdoers would be liable for the harm the woman suffered; more, if one wrongdoer could not pay its portion of the judgment, the other would make up the difference. But this would not be true under H.R. 956. If this bill were enacted, even the best case scenario would be appalling: the supplier, though knowing its product posed danger, would be immune from suit, and the portion of noneconomic (pain and suffering) damages allocated to it would be lost to the woman. In addition, the manufacturer, no matter how intentional its decision to implant a harmful product, might benefit from the bill's cap on punitive damages. But there would be a worse case scenario, which very well could happen. If the manufacturer of the implant entered bankruptcy, no defendant would be left to pay the woman's damages, let alone to make a punitive award deterring future misconduct. One wrongdoer would have immunity, the other insufficient resources; as a result, the innocent injured woman would bear the full cost of the harm. In short, a woman who under current law would receive full compensation and perhaps punitive damages, under H.R. 956 would get absolutely nothing.

This example, indeed, is more than a hypothetical. There are identifiable injured women today facing situations that are substantially similar to the one I have just described. Their prospects of recovering anything at all for the harm caused by ruptured implants would decrease dramatically if H.R. 956 became law.

I cannot believe that even the supporters of the Conference Report would sanction these results. Real people with real injuries cannot be left to suffer in this fashion; more, the companies that cause these injuries cannot be left, through lack of a deterrent, to wreak further harm. I therefore must return the bill that has been presented to me. There is nothing "common sense" about its "reforms" to the law of product liability.

The Washington Times
★ TUESDAY, MAY 7, 1996

Millionaire blues

I get faintly annoyed these days when I hear of excessive compensation for the corporate rich. Put yourself in the shoes of Disney's poor Michael Eisner, who tops Forbes' long-term "executive compensation" list for the third year in a row with $233 million for the last five years. More than half this admittedly substantial sum came from exercising stock options and are the by-products of a roaring bull market. But if you don't know what I'm talking about with my executive compensation and roaring bull market, then you're all the more to be pitied. Because I don't know about you, but I'm not paid in stock options.

Richard Grenier

Here, you Mike Eisner, that they talked about in grammar school as a boy who could be president, or at least had the right to hope your children would do better than you did. And where does that leave him? High and dry? Low and wet, if you ask me.

Then there are all sorts of millionaires that neither I nor many other people should be envious of. There's a lion in Hollywood who's a millionaire, because he's guaranteed not to eat you. Then there's a Daniel Burrus who makes $4 million consulting with corporations about corporations. We have an honest-to-God millionaire Indian chief (Mashantucket Pequots) who is the Big Indian behind the now 350-member tribe sprawling Foxwood Resort Casino in Ledyard, Conn. From such a money spinner, each of the tribesmen receives a stipend. We also have a millionaire hairdresser, a millionaire private detective, and one of our favorites, Dan Harrington, a bankruptcy attorney turned gambler, who brought in last year, after his "seasons" in London and Monte Carlo, $1.4 million.

But of all the artistic millionaires of whom I do not have the slightest envy, the first and foremost will almost always be Maya Angelou (real name Marguerite Annie Johnson). Ms. Angelou earned $2 million just for speaking engagements last year and her total yearly income came to nothing short of $4.3 million.

Ms. Angelou, 68, who in her time has been reputedly manager of a brothel, streetcar conductor, Creole cook, actress and friend of Billie Holiday — if we can take her word for it. She has written 14 books, largely autobiographical, which have brought in another $2 million. Her first and best-known book, "I Know Why the Caged Bird Sings," an autobiographical work about her early years, spent 6 weeks on the New York Times best seller list in 1970. And has run, since 1993, for another 143 weeks. "The Caged Bird" alone brought her at least $300,000 of royalties last year, not counting 100,000 copies sold as required reading in schools.

There are all sorts of millionaires that neither I nor many other people should be envious of.

"I didn't know about making money from writing as a child. I thought success meant having an attache case and a pair of shoes and bags that matched," the poet told an interviewer from Forbes. Ms. Angelou got lots of national exposure when she read her "On the Pulse of Morning" at President Clinton's 1993 presidential inauguration.

She now operates out of a red brick mansion in Winston Salem, North Carolina, overseeing three full-time assistants and a small army of professionals who manage her public appearances, book contracts, and media deals. Last year, movie appearances including a leading role in "How to Make a Quilt" earned her about a quarter of a million dollars. Another $100,000 or so came from her lifetime appointment as a professor of American Studies at Wake Forest University.

In return for the $100,000 that Wake Forest gives her, the poet gives nothing visible in return. She doesn't lecture. She doesn't see students. She doesn't even handle a "creative" writing course. When asked if she is concerned about federal cutbacks in grants for the arts, she has said, "My own work is not threatened financially."

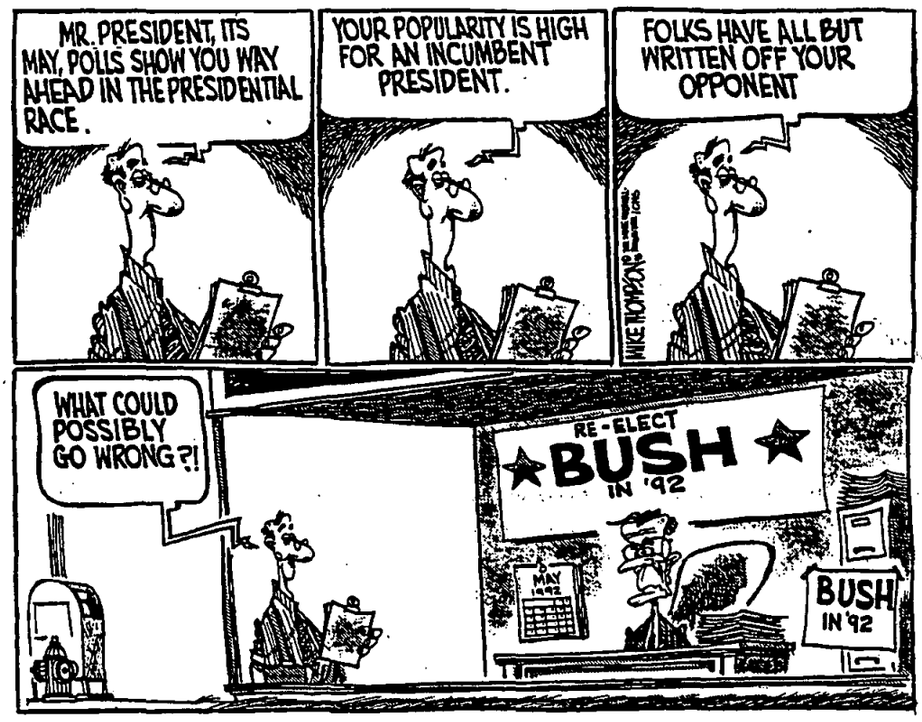
And after all, an artist's first duty is to his creative self, is it not?

Richard Grenier is a columnist for The Washington Times. His column appears here Tuesday and Friday.

The Washington Times
★ TUESDAY, MAY 7, 1996

DAN QUAYLE

Premature political panic



On a recent visit to our nation's capital, I was struck by the tone of some of my Republican friends who say Sen. Bob Dole is headed for defeat in November and needs a wake-up call.

I have nothing against wake-up calls — as long as things don't get personal. But all these predictions of gloom and doom are unhelpful and off base. Having been a candidate for federal office in most elections since 1976, I know the biggest headaches are often caused not by your opposition but by your own people.

The real wake-up call should go to those who want to be the first to predict disaster. Since Washington worships at the altar of poll numbers, here are a few to consider: A CNN-Gallup poll last week showed that 61 percent of the American people feel the country is on the wrong track. Only 29 percent say we're heading in the right direction. The same poll also found that 56 percent of the people feel the country is in deep and serious trouble.

Facing numbers like that, President Clinton can't hope to win on the mood of the electorate. What else does he have to offer — his legacy? Good question: If Mr. Clinton's presidency were to end today, what would that legacy be?

Every president is remembered for something. Franklin Roosevelt brought America out of the Great Depression and to the threshold of victory in World War II. Dwight Eisenhower ended the Korean War and gave America years of stability and prosperity. John F. Kennedy inspired the nation to put a man on the moon by the end of the 1960s.

Lyndon Johnson — for better or for worse — enacted the Great Society. Richard Nixon got us out of Vietnam and opened the door to China. Gerald Ford, in the White House just 29 months, healed America after the long national nightmare of Watergate. Ronald Reagan and George Bush together ended the Cold War.

As to Bill Clinton's legacy, your guess is as good as mine.

This election is not over. Republicans won an overwhelming victory in 1994 because of issues like lower taxes, a balanced budget, welfare reform and term limits. Has the American electorate suddenly changed its mind and decided it wants higher taxes, bigger deficits, more people on welfare and more career politicians who are out of touch with the people they represent? Of course not.

Republicans still own these issues, but we're lacking the unified theme we had in 1994. The GOP Congress is debating Ted Kennedy's election-year minimum-wage proposal instead of a Republican tax cut.

It is time for our team to get back on message, and the place to start is taxes. In an era of wage stagnation, the quickest way to increase take-home pay is to cut taxes. More take-home pay means more savings and investment, which will boost the economy and generate more jobs.

The best way to get tax cuts on the agenda is to boldly challenge the conventional wisdom and the Washington establishment. The confused, 7-million-word tax code does not have the support of middle-class Americans. They know the code wasn't written for them but for the lucky few who can afford to hire lobbyists to obtain loopholes and preferences.

Let's make a strong stand for those who believe the tax system is both unfair and too complicated. It is time to focus on a modified flat tax that would allow a deduction for home-mortgage interest and perhaps charitable contributions.

A low, flat tax, combined with the Republicans' honest plan to balance the budget, would work wonders for our economic future. When taxes are made lower and flatter, the economy does well, as shown by the history of the 1960s and the 1980s. When taxes go up, the economy slows, as we saw in the '70s and are seeing today.

In the fourth quarter of 1992, the economy was growing at the rate of 8 percent. Today, the rate is about 2 percent, yet the president says this is the best economy in 30 years. Fine — that should win him the votes of the 29 percent who think America is on the right track. We can and should take the rest, and we don't need Madison Avenue packaging to do it.

Yes, a wake-up call is in order. This election is ours to win — or to lose. Americans voted for our conservative themes in 1994 and are willing to do so again. So let's focus on our message rather than on each other.

Former Vice President Dan Quayle is chairman of the Competitiveness Center of the Hudson Institute in Indianapolis.

RICHARD MAHONEY

Cause to override on liability

The "Common Sense Product Liability Legal Reform Act of 1996" was passed handily by both Houses of the Congress, yet the president chose to veto it. Here are five reasons why Congress should override that veto.

(1) *It is a bipartisan bill.* A substantial number of House and Senate Democrats joined Republicans in its passage. In the Senate, it even withstood a filibuster, garnering 60 votes to affirm it. Sixty percent of the Senate is a lot of votes for the president to have ignored in his veto act. He said, in effect, to co-sponsors Sens. Jay Rockefeller, West Virginia Democrat, and Slade Gorton, Washington Republican, "You and your 58 colleagues have made a bad law which I must overturn."

(2) *The bill fully protects injured parties.* The bill preserves all currently available remedies, including payment for: loss of income, medical expenses, pain and suffering, and punitive damages. In the case of punitive damages for "conscious, flagrant indifference" by the defendant "to the rights and safety of others," injured parties can receive punitive awards for up to 200 percent of the economic and non-economic remedies described above. And there are provisions for judges to increase punitive awards beyond that amount if the punitive award is deemed to not be a sufficient deterrent against future egregious behavior.

(3) *The "tort reform" bill makes sense — and is fair.* For example, it properly puts the liability blame for product injury on the manufacturer, not someone who was merely a reseller or on someone who supplies minor amounts of materials to a manufacturer for medical devises.

But it also says that if use of alcohol or drugs by the injured party is a principal cause for the injury — the manufacturer is not liable. To do otherwise tells people, "You can be rewarded by the manufacturer for getting yourself hurt by a product while you're drunk or stoned." What a wonderful message *that* presidential veto conveys!

There's no liability if the product is 15 years old or more — and liability is reduced if you have misused the product. Now that's hardly breaking new ground in logic! A further provision is that, as a manufacturer, you're liable only for your share of the injury — that too makes sense.

(4) *All of society now pays for the lucky tort "jackpot winners" — the Product Liability Act helps consumers.* Poll after poll shows at the public supports reform. The public increasingly understands that they pay for runaway product liability costs in the higher prices of products they buy. And with the rise in 401(k) programs, citizens are realizing that excessive court costs also affect their retirement security. For example, about two-thirds of all stocks are owned by retirees, those near retirement, or by pension funds — with retirement security highly dependent on corporate financial health.

People really do watch the earnings of stocks they depend on for their security and they pay attention to what affects those earnings.

(5) *The bill has voter appeal.* Passage is strongly supported by organizations like the National Federation of Independent Business (NFIB) who represent the nation's job-creating small- and medium-sized businesses. These members are very active in the political process — they vote and they get out the vote in large numbers!

Nader groups and the trial lawyers are about the only organized opposition to passage.

Ralph Nader is already running against the president. And where will the trial lawyers go if Congress supports this popular bill? Will they stay on the sidelines and withhold their campaign contributions, effectively helping conservatives get elected? Will they ignore the possibility of even further tort reform in a different administration? Not likely!

The voters will be watching with considerable interest. Will it be yet another victory for the trial lawyers or will Congress overturn the veto and enact into law the bipartisan compromise hammered out in both the House and Senate?

The public has said that it's time to reform the liability lottery — let's hope Congress listens: Override the president's veto!

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